J.L.M. Inc. d/b/a Sheraton Hotel Waterbury *and* Local 217, Hotel and Restaurant Employees and Bartenders Union, AFL–CIO. Cases 34–CA–4535, 34–CA–4628, 34–CA–4749, 34–CA–4800–2, and 34–RC–936[1]

September 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

This case raises the issue, inter alia, of whether a remedial bargaining order is warranted to remedy violations of the Act.

On May 17, 1991, Administrative Law Judge Wallace H. Nations issued the attached decision. The General Counsel and the Respondent each filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] as modified, and to adopt the recommended Order as modified[4] and set forth in full below.

1. The judge found that the Respondent committed numerous violations of the Act but concluded that these violations did not require that a bargaining order be issued as, in his view, the violations were curable by traditional remedies. The General Counsel excepts, contending that a bargaining order is required. We agree with the General Counsel.

In ascertaining whether a bargaining order is warranted to remedy the Respondent's misconduct we apply the test set out in *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). In *Gissel*, the Court delineated two types of situations where bargaining orders are appropriate: (1) ''exceptional'' cases marked by ''outrageous'' and ''pervasive'' unfair labor practices; and (2) ''less extraordinary'' cases marked by ''less pervasive'' practices.[5] Thus, the Court placed its approval on the Board's use of a bargaining order in ''less extraordinary'' cases where the employer's unlawful conduct has a ''tendency to undermine [the union's] majority strength and impede the election processes.''[6] The Court indicated that when unfair labor practices are of this character and the union at one time had a majority support among the unit employees, the Board may enter a bargaining order. With respect to such a remedy, the Court said:

> In fashioning a remedy in the exercise of its discretion, then, the Board can properly take into consideration the extensiveness of an employer's unfair practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employees sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue . . . .[7]

The Respondent operates a three star hotel located in Waterbury, Connecticut. The Hotel has been operational since 1985, with no history of collective bargaining. The Union initiated contact with the Hotel's employees in April 1989. On October 5, 1989, the Union began conducting weekly organizing committee meetings designed to educate members of the committee about the Union. It is undisputed that Respondent had knowledge of the Union's organizing efforts from the outset and knew of the identities of the Union's primary supporters by November. By December 14, 1989, the Union had obtained a majority of signed membership cards.[8] Following the Respondent's rejection of the Union's December 14, 1989 demand for recognition, the Union, on December 15, 1989, filed a representation petition with the Board. Pursuant to a Stipulated Election Agreement, an election was con-

[1] The judge inadvertently omitted the representation case citation from his decision.

[2] The Respondent and the General Counsel have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Although we conclude that the Respondent's action of hiring police to patrol the hotel was unlawful, we recognize that Union Agent Traber's conduct at the home of the Theriaults may have been unprotected, and we further acknowledge that an employer can take steps to protect employees from coercion. However, in the circumstances of this case, we agree with the judge that the Respondent was not motivated by a desire to protect the Theriaults in their home. Rather, the Respondent seized on this incident as a pretext to disparage and undermine the Union in the eyes of the employees.

Chairman Stephens does not agree that this conduct by the Respondent violates Sec. 8(a)(1) of the Act, but he agrees that all the Respondent's other conduct found unlawful here warrants the granting of a bargaining order for the reasons stated in sec. 1 below.

[4] We adopt the administrative law judge's recommendation that the election held January 25, 1990, be set aside. For the reasons set forth below, we shall modify the judge's recommended Order to direct a second election, and we shall order that the Respondent, on request, bargain collectively with the Union as the exclusive bargaining representative of all the employees in the appropriate unit.

[5] Id. at 613–614.

[6] Id. at 614.

[7] Id. at 614–615. In considering the Respondent's conduct, we find it unnecessary to resolve whether the conduct falls under category I. As discussed here, it clearly falls into at least category II and the Union had majority status. Therefore, a bargaining order is warranted.

[8] There are no exceptions to the judge's finding that cards had been signed by a majority of the bargaining unit members.

ducted on January 25, 1990. The Union lost the election 104 to 62, with 21 challenged ballots.

As correctly found by the judge, both before and after the election, the Respondent committed numerous violations of the Act. Early in the antiunion campaign it unlawfully discharged Roger Sauvageau. Sauvageau was a member of the union organizing committee and an outspoken advocate for the Union. On October 13, 1989, after Sauvageau expressed the view that the Union stood a good chance of getting in, Respondent's executive housekeeper, Kathy Tavares, warned him, ''You better watch out, you're one of the ten on the list.'' The following day Kathy Tavares had a conversation with employee Eliza Svehlak in which she told Svehlak that Sauvageau ''didn't stop running his mouth about . . . the Union,'' that ''he already had a blackmark against him,'' and that ''he could be fired for it.'' On November 2, 1989,[9] General Manager Richard Bair gave Sauvageau a written warning because the Respondent was seeking to punish Sauvageau for his soliciting support for the Union. On November 30, 1989, Respondent's owner, Joseph Calabrese, discharged Sauvageau because of his union activities.[10] Thereafter, in December 1989, after apparently learning that the Regional Director was about to issue a complaint concerning Sauvageau's discharge, the Respondent posted a notice in December 1989, which, inter alia, stated that Sauvageau would never work for the Respondent again.[11] As the judge correctly finds, the Respondent in posting this notice was reminding its employees of its unlawful action and reinforcing the message that it had sent by firing Sauvageau in the first place, viz, that it will get rid of union supporters.

Sauvageau was not the only union supporter to suffer at the Respondent's hands because of union activities. Svehlak, a high profile union supporter, was initially issued a warning designed to stop her from engaging in soliciting support for the Union. On the day of the election she was assigned to clean rooms in order to keep her away from the bulk of union supporters. Ultimately in May 1990, she was discharged because of her union activities. In April 1990, employees Barbara Racine and Laurie Grenier, both organizing committee members and frequent challengers to Calabrese in employee meetings held by him, had their hours reduced and were ultimately discharged because of their union activities. In addition, the Respondent unlawfully reduced the hours of three other employees, Hector Echeandia, Cesar Barrera, and Grace Kelley because of their union activities. Finally, the Respondent unlawfully disparaged the Union by its reaction to an alleged union threat to an employee and using the police presence to give the impression of imminent danger to employees from the Union.

As noted above, in determining whether a bargaining order is appropriate, the Board examines the severity of the violations and the effects that the unfair labor practices would have on the holding of an election.[12]

It is highly significant that many of the violations present here were serious in nature. Both the courts and the Board have long recognized that the threat of job loss (i.e., discharge, layoff, and plant closure) because of union activity is among the most flagrant kind of interference with Section 7 rights and is more likely to destroy election conditions, and to do so for a longer period of time, than other unfair labor practices.[13] Indeed, the natural and likely result of the threats found here reinforced the employees' fear that they would be targeted for retaliation and lose their jobs if they persisted in their union activity. Certainly, the implied threat contained in the Respondent's posting of its statement regarding Sauvageau's discharge was a threat conveyed to all unit employees. Further, the Sauvageau discharge was followed by the discharge of three additional employees and the reduction in hours of three other employees.

The success of the Respondent's unlawful preelection campaign is illustrated by the clear dissipation of union support that resulted in the Union's defeat. The judge found that the Union obtained 128 valid authorization cards, some 18 more than necessary to establish majority status on December 14, 1989. However, a little more than 1 month later, on January 25, 1990, the Union received only 62 votes in the election. Further, we find that the Respondent's actions, after the election, were motivated by union animus and unlawful, and perpetuated the Respondent's message that it would rid itself of all remaining outspoken union supporters. Thus, during the postelection period the Respondent discriminatorily terminated Svehlak, Racine, and Grenier.

The judge concluded that the reinstatements of Sauvageau and Svehlak, which had not yet been done, should strengthen the Union. That is unwarranted speculation. Further, there is no support for the judge's finding that the discharges of Grenier and Racine were

[9] The judge incorrectly gives October 29 as the date that the warning was issued.

[10] We adopt the judge's finding that employee Sauvageau's discharge was motivated by his activity on behalf of the Union, and that the Respondent's reasons for terminating him were pretextual. In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging Sauvageau, we find it unnecessary to rely on the judge's findings that Sauvageau was engaged in protected concerted activitity when he acted as a witness and advocate on behalf of employee Little during Little's disciplinary meeting.

[11] There was no testimony or other record evidence regarding the precise date in December when this notice was posted.

[12] See *Koons Ford of Annapolis*, 282 NLRB 506, 508 fn. 12 (1986).

[13] See, e.g., *Gissel*, supra at 611 fn. 31.

accomplished so quietly that they would have no effect on employees. Rather, these discharges were undoubtedly seen by employees as a continuation of the Respondent's previous pattern of retaliation against union supporters.

The judge incorrectly relied on the turnover rate for both management and employees in rejecting a bargaining order. The turnover rate is not a relevant consideration under existing Board law concerning factors governing the issuance of a *Gissel* bargaining order.[14] Further, even if we were to consider such turnover, we cannot agree with the judge's finding that the turnover rate suggests that we should not grant a bargaining order. Many of the violations here were committed by Calabrese, the owner of the Hotel, and his top managerial staff. These persons remain employed. The positions held by these persons clearly serve to strengthen and amplify in the minds of the employees the seriousness of the threats conveyed and the discriminatory action taken.[15] Further, there is no evidence that the other managers and supervisors who committed the unfair labor practices have since left the Respondent. As to employee turnover, there is no evidence that this turnover was not a result of the unlawful conduct. *F & R Meat Co*., supra, *Bridgeway Oldsmobile*, 281 NLRB 1246 (1986).

In view of the nature of the Respondent's violations, we conclude that the possibility of erasing the effects of the unfair labor practices and conducting a fair election is slight. Under these circumstances, simply requiring the Respondent to refrain from unlawful conduct will not eradicate the lingering effects of the hallmark violations it committed and will not deter their recurrence. Further, we find that the employees' representational desires expressed through authorization cards, on balance, would be better protected by a bargaining order than by traditional remedies. Accordingly, we shall order the Respondent to bargain with the Union as the exclusive representative of its employees in the unit found appropriate for the purposes of collective bargaining, effective December 14, 1989. By that date, the Respondent had already commenced its unlawful course of conduct, and on that date the Union possessed authorization cards from a majority of unit employees.

2. Having determined that the Respondent's bargaining obligation attached on December 14, 1989, and noting that the Union had demanded recognition on that date, we next consider the General Counsel's contentions that the Respondent had a duty to bargain with the Union over the following changes made subsequent to that date:

1. The implementation on December 16, 1989, of a new restaurant policy concerning the covering of shifts;

2. The elimination of the 1 p.m. to 5 p.m. shift in the sports complex;

3. The reduction of Grace Kelley's hours;

4. The denial of work to the following employees: Mark Scott, Hector Echeandia, Cesar Barrera, Kimberly Goffredo, and Jennifer Goffredo; and

5. The change of the laundry department employees' hours in March 1990.

The General Counsel asserts that the Respondent's failure to bargain over each of the above-listed subjects constituted separate violations of Section 8(a)(5) and (1) of the Act and should be remedied by the restoration of the status quo ante as to each affected employee. For the reasons stated below, we agree.[16]

I. RELEVANT FACTUAL FINDINGS

A. *Change in Shift Coverage Policy*

Prior to the Union's organizational efforts in the fall of 1989, the existing policy in the restaurant was that servers were responsible for finding their own replacements for scheduled shifts if they were going to miss work for a personal reason. On December 16, 1989, the Respondent posted the following memorandum:

> Effective 12/16/89. If you cannot work your assigned shift for any reason, you must contact a restaurant manager a minimum two (2) hours prior to your shift. The manager will find a replacement in order to insure fair division of shifts. Under no circumstances shall an employee cover his/her own shift. Any deviance from this policy will result in proper disciplinary action!

B. *The Elimination of the 1 to 5 p.m. Shift in the Sports Complex and the Resulting Denial of Work to Kimberly and Jennifer Goffredo*

The Respondent, in early January 1990, eliminated the 1 to 5 p.m. shift in the sports complex. This resulted in the denial of work to Kimberly Goffredo and Jennifer Goffredo. As a result of the elimination of the shift, Kimberly began working 3 days per week from 5 to 10 p.m., and Jennifer worked 2 days during the week and on weekends. The Respondent asserts that the shift was eliminated because of a decline in the Hotel's occupancy, a decline in the number of nonguest memberships in the sports facility, and the

[14] *F & R Meat Co*., 296 NLRB 759 (1989).

[15] See *Kona 60 Minute Photo*, 277 NLRB 867, 871 (1985).

[16] We have already stated that we are adopting the judge's findings that certain of these decisions were discriminatorily motivated. For the purposes of this discussion, we assume, arguendo, that the Respondent was motivated by economic considerations as to each of the decisions.

fact that the afternoon shift was the least used of the three shifts.

C. *Reduction of Grace Kelley's hours*

The Respondent reduced Grace Kelley's hours from 3 days to 1 day starting in the pay period ending April 29, 1990, citing the fact that she was a part-time employee. Prior to the cut, the Respondent told Kelley that the change was being made because it was having trouble with part-time people, that they were too erratic, and it was hard to keep a schedule.

D. *Respondent's Denial of Work to Certain Named Employees*

(a) Mark Scott was a room service waiter. In August 1989, while on vacation, Scott was injured and notified Manager Linda Boulanger that he would be out for several weeks. Scott returned to work on October 18, 1989, and was assigned to work 2–3 shifts per week. In early December 1989, Scott's schedule was reduced to one shift. When he questioned management about the change, he was told that business was slow. The following week, Scott was taken off the schedule completely. The Respondent's records show that Scott was laid off during the payroll period ending December 24, 1989. He was told the layoff was because of lack of work.

(b) In December 1989, Hector Echeandia, a cook, had his hours reduced. The Respondent contends that the hours were cut because of a reduction on the level of business.

(c) In the payroll period ending January 7, 1990, Cesar Barrera was removed from the schedule for 1 week. The Respondent offered no specific explanation for its actions.

E. *Change in Hours of Laundry Employees*

In March 1990, the Respondent changed the shift worked by its laundry employees from a 7 a.m.–3 p.m. shift to an 8 a.m.–4 p.m. shift. The Respondent told the employees that it made the change in order to accommodate all the hotel departments.

Regarding the foregoing decisions, we must determine whether they are mandatory subjects of bargaining. See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).

II. THE CHANGES WERE MANDATORY SUBJECTS OF BARGAINING

Policies—such as the restaurant shift coverage rules—which concern how employees must go about securing a day off or switching days off are plainly ''terms and conditions of employment,'' and, although the Respondent argues that its change on this subject was lawfully motivated, it makes no claim that it is outside the ambit of mandatory subjects of bargaining. The change in the hours of the laundry employees' shift was also clearly a change in the terms and conditions of employment that is subject to the bargaining obligation. See *Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 691 (1965).

The Respondent asserts that the other changes were cost-cutting measures adopted in response to a downturn in the economy and a decline on its business. The cost cutting involved a diminution of work hours with a resulting reduction in labor costs. Each decision, however, was literally within the scope of an employer's obligation to bargain as defined by Section 8(d) of the Act.[17] None of the decisions involve any basic change in the direction or scope of the Respondent's enterprise. Thus, we find that these decisions constitute the type of management decisions that are ''almost exclusively 'an aspect of the relationship''' between employer and employees.[18] Therefore, we find that the Respondent was obligated, since the Union's December 14, 1989 demand, to bargain over the above-noted decisions.[19]

Accordingly, we find that the Respondent's failure to notify and bargain with the Union regarding the aforementioned unilateral decisions to reduce labor costs violated Section 8(a)(5) and (1).[20]

AMENDED REMEDY

As noted above, we shall order the Respondent to bargain with the Union as of December 14, 1989.

As the Respondent has violated the Act by failing to notify and bargain with the Union over its decisions to implement, on December 14, 1989, a new restaurant policy concerning the covering of shifts; eliminating the 1 to 5 p.m. shift in the sports complex; reducing Grace Kelley's hours; denying work to Mark Scott,

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[17] Sec. 8(d) provides, in pertinent part, that

> to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . .

[18] *Postal Service*, 306 NLRB 640, 642 (1992).

[19] The reduction in Kelley's hours were due to the Respondent's apparent dissatisfaction with part-time employment. However, inasmuch as her hours were reduced, and since the change did not involve a change in the direction or scope of the enterprise, we conclude that the foregoing rationale applies to her as well.

[20] We amend the judge's Conclusions of Law by inserting the following as paragraph 6 and renumbering the subsequent paragraphs:

> 6. The Respondent has committed unfair labor practices in violation of Section 8(a)(5) of the Act by failing and refusing to notify and bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit concerning its decisions to cut labor costs by eliminating the 1 p.m. to 5p.m. shift in the sports complex; reducing Grace Kelley's hours; and denying work to Mark Scott, Hector Echeandia, Cesar Barrera, Kimberly Goffredo, and Jennifer Goffredo; and by its decisions to implement a new restaurant policy on December 16, 1989, concerning the covering of shifts; and changing the hours of the laundry department employees in March 1990.''

Hector Echeandia, Cesar Barrera, Kimberly Goffredo, and Jennifer Goffredo; and changing the laundry department employees' hours in March 1990, as well as the effects of those decisions, we shall order bargaining and full backpay relief in order to restore the status quo ante.[21] We note that there is no showing that such a remedy would be unduly burdensome. *Fibreboard Corp. v. NLRB*, 379 NLRB 308 (1988). Accordingly, we shall order the Respondent to bargain with the Union concerning the above-noted unilateral decisions and the effect of those decisions. We have already found that the Respondent discriminatorily denied work to Hector Echeandia and Cesar Barrera and reduced the hours of work for Grace Kelley, and we note that as to those employees, the appropriate make-whole remedy has been ordered as set forth in the judge's decision. We shall also order the Respondent to offer reinstatement to employees Mark Scott, Kimberly Goffredo, and Jennifer Goffredo and pay them backpay to compensate for any loss of earnings and other benefits they may have suffered as a result of the unlawful actions taken against them. We shall leave the determination of losses suffered by these employees to the compliance stage of this proceeding. Backpay is to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also modify the judge's recommended Order to reflect these changes.[22]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, J.L.M. Inc. d/b/a Sheraton Hotel Waterbury, Waterbury, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Cease and desist from

(a) Discharging its employees for engaging in conduct protected by the Act.

(b) Reducing the hours of work for its employees in retaliation for engaging in activities in support of the Union.

(c) Issuing disciplinary warnings to its employees for engaging in activities in support of the Union.

(d) Threatening employees because of their union activities.

(e) Posting a notice concerning the unlawful discharge of an employee that states that the Respondent would never rehire him.

(f) Encouraging antiunion sentiment at employee meetings while attempting to stifle prounion sentiment and impliedly threaten retaliation for union support.

(g) Disparaging the Union by overreacting to an alleged union threat to an employee and using police presence to give the impression of imminent danger to employees from the Union.

(h) Refusing to recognize and bargain collectively concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with Local 217, Hotel and Restaurant Employees and Bartenders Union, AFLCIO as the exclusive representative of employees in the following appropriate unit:

> All regular full-time and regular part-time employees including receivers, cooks, dishwashers, night cleaners, bartenders, barbacks, banquet servers, banquet set-up, coat room attendants, waiters/waitresses, cocktail servers, bussers, host/hostesses, cashier, room service employees, front desk clerks, PBX operators, night auditors, reservationists, bellmen, maids, housemen, floormen, laundry employees inspectresses, maintenance employees and sports complex attendants employed by the Employer at its Waterbury, Connecticut facility, who were employed during the payroll period ending December 24, 1989; but excluding office clerical employees, gift shop employees, sales employees and guards, professional employees and supervisors as defined in the Act.

(i) Making unilateral changes in the terms and conditions of employment including implementing a new restaurant policy concerning covering of shifts; eliminating the 1 to 5 p.m. shift in the sports complex; reducing hours; denying work to Mark Scott, Hector Echeandia, Cesar Barrera, Kimberly Goffredo, and Jennifer Goffredo; and changing the laundry department employees' hours in March 1990, without providing the Union with notice and an opportunity to bargain about the decisions and the effect of those decisions.

(j) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive representative of all the employees in the above-described unit concerning rates of pay, wages, hours, and other terms and conditions of em-

[21] Regarding Scott, we leave to compliance the determination of the extent to which his hours were cut prior to the date on which the bargaining obligation commenced, and therefore not subject to bargaining, and the extent to which his hours were cut after that date. It is clear that at least the layoff occurred subsequent to the December 14, 1989 bargaining demand.

[22] We have also made some modifications in the judge's order. Additionally, we shall substitute the broad injunctive language requiring the Respondent to cease and desist from violating the Act ''in any other manner,'' for the provision recommended by the judge. See *Hickmott Foods*, 242 NLRB 1357 (1979).

ployment and embody any understanding reached in a signed agreement.

(b) On request, bargain collectively with the Union concerning the decisions to implement a new policy in the restaurant concerning the covering of shifts; eliminating the 1 to 5 p.m. shift in the sports complex; changing the laundry department employees' hours in March 1990; and the effects of those decisions.

(c) Offer immediate reinstatement to employees Roger Sauvageau, Eliza Svehlak, Laurie Grenier, Barbara Racine, Mark Scott, Hector Echeandia, Cesar Barrera, Kimberly Goffredo, and Jennifer Goffredo to their former positions of employment, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and remove from its files any references to unlawful discharges of these employees and the unlawful warnings issued to Roger Sauvageau, Eliza Svehlak, Laurie Grenier, and Barbara Racine and notify them in writing that this has been done and that the discharges and warnings will not be used against them in any way.

(d) Remove from its records the last performance evaluation given Grace Kelley and notify her in writing that this has been done and that the evaluation will not be used against her in any way.

(e) Make Roger Sauvageau, Eliza Svehlak, Laurie Grenier, and Barbara Racine whole for any loss of pay or other benefits they may have suffered as a result of their terminations in the manner set forth in the remedy section of the judge's decision.

(f) Make Grace Kelley whole for any loss of pay or other benefits she may have suffered as a result of her unlawful reduction in hours of work beginning in May 1990, in the manner set forth in the remedy section of the judge's decision.

(g) Make Hector Echeandia whole for any loss of pay or other benefits he may have suffered as a result of his unlawful reduction in hours of work beginning in December 1989, in the manner set forth in the remedy section of the judge's decision.

(h) Make Cesar Barrera whole for any loss of pay or other benefits he may have suffered as a result of his being unlawfully taken off the work schedule for 1 week in January 1990, in the manner set forth in the remedy section of the judge's decision.

(i) Make Mark Scott, Kimberly Goffredo, and Jennifer Goffredo whole for any loss of pay or other benefits they may have suffered as a result of their unlawful denial of work in the manner set forth in the amended remedy section of this decision.

(j) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in complying with the terms of this Order.

(k) Post at its facility in Waterbury, Connecticut, copies of the attached notice marked ''Appendix.''[23] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(l) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election conducted in Case 34–RC–936 on January 24, 1990, be set aside, and that the petition be dismissed.

MEMBER RAUDABAUGH, concurring.[1]

I agree that the decisions in this case are mandatory subjects of bargaining. However, for most of the decisions, I have a different rationale for reaching that result. Accordingly, I write this separate concurrence.

The Respondent was faced with a decline in its business. As a consequence, it decided to lay off some employees and to reduce the hours of others. The issue is whether these decisions are mandatory subjects.[2]

In analyzing whether a given management decision is a mandatory subject of bargaining, I begin with the three categories of management decisions described by the Supreme Court in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).

As noted, the Court divided management decisions into three categories. The first category consists of management decisions, such as choice of advertising, product type and design, and financing arrangements, which ''have only an indirect and attenuated impact on the employment relationship''; there is no obligation to bargain over these decisions. In the second category are management decisions, such as ''the order of succession of layoffs and recalls, production quotas, and

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] I agree with my colleagues' adoption of the judge's findings that the Respondent committed numerous violations of Sec. 8(a)(1) and (3). I also agree with my colleagues for the reasons they set forth that a bargaining order is warranted to remedy these unfair labor practices

[2] Regarding the decisions which did not involve a layoff or a reduction in hours, I agree with my colleagues regarding the result and rationale. These decisions include the change in the procedure for obtaining substitute shift coverage and the decision to change (not reduce) the hours of the laundry department employees.

work rules, which are almost exclusively 'an aspect of the relationship between employer and employees'''; regarding these there is an obligation to bargain. The third category consists of management decisions that have a direct impact on employment, such as the elimination of jobs, but which have as their focus only the economic profitability of the business. For these decisions, the Court held that bargaining would be required ''only if the benefit, for labor-management relations and the collective-bargaining process, outweighs the burden placed on the conduct of the business.'' Id. at 679.

This case does not involve decisions that have only an ''indirect and attenuated'' impact on employment. Rather, the decisions had a direct impact on jobs and the number of hours to be worked. Thus, the decisions did not fall within category one. On the other hand, the decisions did not involve ''the order of succession of layoffs.'' They involved layoffs themselves or reductions in hours. Thus, the decisions were not within the second category. Rather, the decisions fell within category three. The decisions had a direct impact on employment, and their focus was on the economic profitability of the enterprise in the face of a business decline.

As to this ''category three'' decision, I believe that the burden-of-proof mechanism set forth in *Dubuque* is the appropriate test to apply here.[3] Both *Dubuque* and the instant case involve ''category three'' decisions. Concededly, the particular ''category three'' decision in *Dubuque* involved the relocation of a plant. However, there is nothing in the language of *Dubuque*, or in its reasoning or logic, which necessarily confines the Dubuque test to relocation cases. Accordingly, I consider it appropriate to apply that test to the ''category three'' decisions involved herein.[4]

In applying the test, I find that the General Counsel has met his burden of establishing that the Respondent's decisions did not involve any basic change in the direction or scope of the Respondent's enterprise. Although some employees were laid off and the hours of other employees were reduced, the nature of the enterprise itself was not changed in any fundamental way. Therefore, I find that the General Counsel carried his initial burden of establishing a prima facie case that the decisions made by the Respondent subsequent to the attachment of its bargaining obligation on December 14, 1989, are mandatory subjects of bargaining.

The Respondent has failed to rebut the prima facie case. Nor has the Respondent shown affirmatively that labor costs were not a factor in the decision. Indeed, the evidence indicates that these were labor cost-cutting measures adopted in response to a decline in its business. Finally, the Respondent has failed to establish that the Union could not have offered labor cost concessions that could have changed the unilateral decisions made. Had the Respondent been willing to bargain, the Union might have offered concessions that would have resulted in savings to the Respondent.[5]

Accordingly, I find that the Respondent was obligated to bargain with the Union over the unilateral decisions and that the Respondent's failure to do so violated Section 8(a)(5) of the Act.

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[3] In *Dubuque Packing Co.*, 303 NLRB 386 (1991), the Board announced the following balancing test for determining whether an employer's economically motivated decision to relocate unit work is a mandatory subject of bargaining:

> Initially, the burden is on the General Counsel to establish that the employer's decision involved a relocation of the unit work unaccompanied by a basic change in the nature of the employer's operation. If the General Counsel successfully carries his burden in this regard, he will have established prima facie that the employer's relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the . . . former plant is to be discontinued entirely and not moved to the new location, or establishing that the employer's decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence: (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate. Id. at 391.

[4] I do not agree that the rationale of *Postal Service*, 306 NLRB 640 (1992), is to be applied here. In that case, the employer was required, by legislation, to reduce operating costs by $160 million. The employer decided that $60 million of that total would be achieved by reducing labor costs. The employer then decided *which* labor costs would be reduced in order to achieve that $60 million reduction. The question before the Board was whether the latter decision was a mandatory subject of bargaining. The Board, in answering the question affirmatively, held that the decision was within category two of *First National Maintenance*, supra. Since the decision involved *which labor cost to cut*, and there was no change in the nature of the operation, I agreed that the decision fell within category two. However, where, as here, an employer is faced with a business decline, there are a number of ways in which it can respond. Some of them involve mandatory subjects of bargaining and some do not. For example, the employer could decide to discontinue a line of business *or* the employer could decide to lay off employees or reduce their hours. I would apply the *Dubuque* test to determine whether the chosen decision involves a mandatory subject.In applying the test, I find that the General Counsel has met his burden of establishing that the Respondent's decisions did not involve any basic change in the direction or scope of the Respondent's enterprise. Although some employees were laid off and the hours of other employees were reduced, the nature of the enterprise itself was not changed in any fundamental way. Therefore, I find that the General Counsel carried his initial burden of establishing a prima facie case, that the decisions made by the Respondent subsequent to the attachment of its bargaining obligation on December 14, 1989, are mandatory subjects of bargaining.

[5] Although the reduction of Kelley's hours was apparently not tied to a business decline, I would apply *Dubuque* and find it to be a mandatory subject. The decision did not involve a change in the scope or direction of the Respondent's business. The Respondent has not shown that labor costs were not a factor in this decision and has not shown that the Union could not have offered proposals that could have changed the decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge our employees for engaging in conduct protected by the Act.

WE WILL NOT reduce the hours of work for our employees in retaliation for engaging in activities in support of Local 217, Hotel and Restaurant Employees and Bartenders Union, AFL–CIO or any other union.

WE WILL NOT issue disciplinary warnings to our employees for engaging in activities in support of the Union.

WE WILL NOT threaten our employees with more onerous working conditions or discharge them because of their support of the Union.

WE WILL NOT post notices that state that we will never rehire unlawfully discharged employees in order to coerce and restrain our employees from supporting the Union.

WE WILL NOT encourage antiunion sentiment at employee meetings while attempting to stifle prounion sentiment and impliedly threaten retaliation for union support.

WE WILL NOT disparage the Union by overreacting to an alleged union threat to an employee and use police presence to give the impression of imminent danger to employees from the Union.

WE WILL NOT unilaterally implement a new restaurant policy concerning the covering of shifts; eliminate the 1 to 5 p.m. shift in the sports complex; reduce employees' hours; deny work to employees; change employees' hours without providing the Union with notice and the opportunity to bargain about those decisions; and the effects of those decisions.

WE WILL NOT refuse to recognize and bargain collectively and in good faith concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with Local 217, Hotel and Restaurant Employees and Bartenders Union, AFL–CIO as the exclusive representative of all employees in the following appropriate unit:

> All regular full-time and regular part-time employees including receivers, cooks, dishwashers, night cleaners, bartenders, barbacks, banquet servers, banquet set-up, coat room attendants, waiters/waitresses, cocktail servers, bussers, host/hostesses, cashier, room service employees, front desk clerks, PBX operators, night auditors, reservationists, bellmen, maids, housemen, floormen, laundry employees, inspectresses, maintenance employees and sports complex attendants employed by the Employer at its Waterbury, Connecticut facility; who were employed during the payroll period ending December 24, 1989; but excluding office clerical employees, gift shop employees, sales employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL, on request, recognize and bargain in good faith with the Union as the exclusive representative of our employees in the above-described unit concerning rates of pay, wages, hours, and other terms and conditions of employment and if an agreement is reached, embody such understanding in a signed agreement.

WE WILL, on request, bargain in good faith with the Union concerning the decisions to implement a new policy in the restaurant concerning the covering of shifts; eliminating the 1 to 5 p.m. shift in the sports complex; reducing Grace Kelley's hours; denying work to Mark Scott, Hector Echeandia, Cesar Barrera, Kimberly Goffredo, and Jennifer Goffredo; and changing the laundry department employees' hours.

WE WILL offer immediate and full reinstatement to employees Roger Sauvageau, Eliza Svehlak, Laurie Grenier, and Barbara Racine to their former positions of employment, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and remove from our files any references to the unlawful discharges of these employees and the unlawful warnings issued to Roger Sauvageau, Eliza Svehlak, Laurie Grenier, and Barbara Racine and notify them in writing that this has been done and that the discharges and warnings will not be used against them in any way.

WE WILL remove from our records the last performance evaluation given Grace Kelley and notify her in writing that this has been done and that the evaluation will not be used against her in any way.

WE WILL make Roger Sauvageau, Eliza Svehlak, Laurie Grenier, and Barbara Racine whole for any loss of pay or other benefits they may have suffered as a result of their terminations, plus interest.

WE WILL make Grace Kelley whole for any loss of pay or other benefits she may have suffered as a result of her unlawful reduction in hours of work beginning in May 1990, plus interest.

WE WILL make Hector Echeandia whole for any loss of pay or other benefits he may have suffered as a result of his unlawful reduction in hours of work beginning in December 1989, plus interest.

WE WILL make Cesar Berrera whole for any loss of pay or other benefits he may have suffered as a result of his being unlawfully taken off the work schedule for 1 week in January 1990, plus interest.

WE WILL offer Grace Kelley, Mark Scott, Hector Echeandia, Cesar Berrera, Kimberly Goffredo, and Jennifer Goffredo immediate and full reinstatement to their former positions of employment, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make Mark Scott, Kimberly Goffredo, and Jennifer Goffredo whole for any loss of pay or other benefits they may have suffered as a result of their being unlawfully denied work, plus interest.

J.L.M. INC. D/B/A SHERATON HOTEL WATERBURY

William E. O'Connor and *John S. F. Gross, Esqs.*, for the General Counsel.
Edward F. O'Donnell, Jr. and *Kenneth Plumb, Esqs.*, of Hartford, Connecticut, for the Respondent.
Gregg Adler, Esq., of Hartford, Connecticut, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On December 5, 1989, Local 217, Hotel and Restaurant Employees and Bartenders Union, AFL–CIO (Union, Local 217, or Charging Party) filed unfair labor practice charges in Case 34–CA–4535 against J.L.M. Inc. d/b/a Sheraton Hotel Waterbury (Respondent, Hotel, or Company). The Union filed an amended charge in Case 34–CA–4535 on January 5, 1990. On January 19, 1990, a complaint and notice of hearing issued in this case alleging that Respondent had committed several unfair labor practices in connection with an organizing campaign by the Union. Specifically, the complaint alleged that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (Act) by threatening employees with unspecified reprisals and discharge, by creating the impression of surveillance, and by disciplining and discharging its employee Roger Savageau because he engaged in protected concerted union activities. Respondent filed a timely answer to the complaint and denied the commission of any violation of the Act.

The Union filed a petition for an election with Region 34 of the National Labor Relations Board (Board or NLRB) on December 15, 1989, in Case 34–RC–936. Pursuant to a Stipulated Election Agreement, an election was conducted on January 25, 1990. Those employees eligible to vote in the election were:

> All regular full-time and regular part-time employees including receivers, cooks, dishwashers, night cleaners, bartenders, barbacks, banquet servers, banquet set-up, coat room attendants, waiters/waitresses, cocktail servers, bussers, host/hostesses, cashiers, room service employees, front desk clerks, PBX operators, night auditors, reservationists, bellmen, maids, housemen, floormen, laundry employees, inspectresses, maintenance employees and sports complex attendants employed by the Employer at its Waterbury, Connecticut facility, who were employed during the payroll ending December 24, 1989; but excluding office clerical employees, gift shop employees, sales employees and guards, professional employees and supervisors as defined in the Act.[1]

The results of the election were 62 votes in favor of the Union and 104 votes against the Union, with 21 of the votes challenged by the parties. On February 1, 1990, the Union, as Petitioner, filed objections to conduct affecting the results of the election.

The Union subsequently filed a charge in Case 34–CA–4628 on February 21, 1990, and filed an amended charge and a second amended charge in Case 34–CA–4628 on April 27, 1990, and June 27, 1990, respectively. The Union filed a charge and an amended charge in Case 34–CA–4749 on May 22, 1990, and June 27, 1990, respectively. A charge in Case 34–CA–4800–2 was filed by the Union on June 28, 1990. On August 24, 1990, the Union filed an amended charge in Case No. 34–CA–4800–2.

On June 29, 1990, an order consolidating cases, consolidated complaint and notice of hearing issued in Cases 34–CA–4535, 34–CA–4628, and 34–CA–4749 alleging that Respondent violated Section 8(a)(1), (3), and (5) of the Act by engaging in conduct set forth in the Union's objections and by terminating its employee Barbara Racine, by causing the termination of its employee Laurie Grenier, by reducing the hours of its employee Grace Kelley, and by reducing the number of scheduled workdays for its part-time employees from three to one. The consolidated complaint further alleges that, prior to the commission of these unfair labor practices, the Union enjoyed the support of a majority of Respondent's unit employees and that Respondent's unfair labor practices were so serious and widespread that their effects could not be erased through traditional Board remedies. Accordingly, the complaint alleges that Respondent is obligated to recognize and bargain with the Union and that Respondent has violated Section 8(a)(5) of the Act by failing to do so. Respondent filed a timely answer to the consolidated complaint and denied the commission of any violation of the Act.

[1] The Respondent denied the appropriateness of this unit in its answer. This is the unit found appropiate for purposes of collective bargaining in Case 34–RC–936, and absent newly discovered or special circumstances, an employer is not permitted to relitigate the issue of the unit in a related unfair labor practice case. As Respondent raised no newly discovered or previously unavailable evidence and claims no special circumstances, the previous unit determination is controlling in this case.

On August 2, 1990, a Report on Objections issued approving the withdrawal of over one-half of the Union's 80 objections and consolidating the remaining objections with issues in Cases 34–CA–4535, 34–CA–4628, and 34–CA–4749 for hearing before and administrative law judge.

On August 24, 1990, a complaint and notice of hearing issued in Case 34–CA–4800–2 alleging that Respondent violated Section 8(a)(1), (3), (4), and (5) of the Act by terminating its employee Eliza Svehlak because of her activities on behalf of the Union and because she gave testimony under the Act, and by unilaterally changing terms and conditions of employment. Respondent filed a timely answer to the complaint and denied the commission of any violation of the Act. Also on August 24, 1990, by order further consolidating cases, Case 34–CA–4800–2 was consolidated with Cases 34–CA–4535, 34–CA–4628, and 34–CA–4749.

On September 17, 1990, Respondent filed a motion for Bill of Particulars with the Board. General Counsel filed its reply and opposition to this motion on September 21, 1990. Attached to General Counsel's reply was an amendment to the consolidated complaint. Prior to General Counsel's amendment to the consolidated complaint, the Union filed on September 20, 1990, a second amended charge in Case 34–CA–4749. Respondent's motion for a Bill of Particulars was denied on October 2, 1990, and Respondent time filed its answer to General Counsel's amendment to the consolidated complaint.

On October 11, 1990, General Counsel filed a notice of intent to further amend the consolidated complaint. Respondent filed its objections to these amendments on October 17, 1990.

A hearing was held before me in Hartford, Connecticut, on October 22–26 and 29–31, November 15–16, and December 3–6, 1990. At the outset of the hearing, I allowed, over the objection of Respondent, General Counsel's request to amend the consolidated complaint as indicated in its notice to further amend the consolidated complaint dated October 11, 1990.[2] General Counsel also sought at this time to amend the complaint in Case 34–CA–4800–2. Respondent filed a request for special permission to appeal my rulings allowing these amendments and also amended its answer to deny the amendment in Case 34–CA–4800–2. The Board denied Respondent's request for a special appeal by telegram dated November 14, 1990.

The initial brief date herein was set for January 11, 1991, but was subsequently extended to February 22, 1991, and then to March 8, 1991. Briefs were received on March 8, 1991, from General Counsel and Respondent. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent J.L.M. d/b/a Sheraton Hotel Waterbury operates a hotel in Waterbury, Connecticut. It has admitted the jurisdictional allegations of the consolidated complaint and I find that it is now, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted and I find that the Union is now and has been at all times material to this proceeding a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES AND OBJECTIONABLE CONDUCT

A. *Overview of the Dispute*

The Respondent, Waterbury Sheraton Hotel, is a three-star hotel located in Waterbury, Connecticut. The Hotel has been operational since 1985 and has approximately 279 rooms with significant banquet, restaurant, recreational, and conference center facilities. The Hotel employs both full-time and part-time employees with approximately 200 to 250 employees on its payroll at any given time depending on the level of business.

The Hotel is owned by Joseph Calabrese and operationally managed on a day-to-day basis by its general manager, Richard Bair. Certain of its subsidiary managers played a large part in this controversy including its housekeeping manager, called executive housekeeper, Kathy Tavares, and two of its restaurant and/or banquet managers, Lisa Brodeur and Melinda Merrill Formica.[3]

In the spring of 1989, two events began almost simultaneously which had significant impact on the Hotel and its employees. First the Hotel began to experience a serious decline in its business occasioned by increased local competition from new hotels and by a general turndown in the economy, which became especially severe in the New England area of the country. It is the Hotel's position that these two negative economic forces caused it to take for the first time various actions to reduce costs, including closing of certain of its restaurant and bar facilities, reducing employee work hours, and laying off employees. Many of these actions are alleged in the consolidated complaint to have been taken, not as a result of economic considerations, but because of the

[2] Par. 18 of the consolidated complaint, excluding the amendment sought by General Counsel in its notice of intent to further amend, reads as follows:

> Respondent, at its facility, denied work to the employees named below on the dates set forth opposite their respective names:
>
> | | |
> |---|---|
> | a) Gina Clay | November 19, 1989 |
> | b) Mark Sanderson | November 19, 1989 |
> | c) Laurie Grenier | November 23, 1989 |
> | d) Barbara Racine | November 23, 1989 |
> | e) Sigfred Echeadia | December 1, 1989 |
> | f) Bella Berdan | November and December 1, 1989 |
> | g) Marc Scott | December 15, 1989 |
> | h) Hector Echeandia | December 15, 1989 |
> | i) Cesar Berrera | January 1, 1989 |
> | j) Kimberly Goffredo | January 2, 1990 |
> | k) Jennifer Goffredo | January 2, 1990 |

The amendment to the above paragraph sought by General Counsel was a substitution of the introductory clause to read:

> Respondent, at its facility, has denied work to the following employees named below since on or about the dates set forth opposite their respective names:

[3] Melinda Merrill was married after the events involved herein and her name changed to Formica. However, because virtually all testimony and all documents refer to as Merrill, she will be referred to by that name throughout this decision.

second significant event of 1989, the organizing campaign among the Hotel's employees by Local 217.

The Hotel's economic contentions are summarized below. It contends that since 1987, it has suffered a continuous decline in business, particularly in terms of the number of quests staying at the Hotel and the number of meals served by the Hotel in its restaurant. By the summer and fall of 1989 the Hotel's business levels had decreased to the point that some cost-cutting measures had to be taken if was to remain a viable operating entity. It began its more significant measures in the summer of 1989 with the closing of Sadie Thompson's—the nightclub located in the Hotel. The Hotel's elaborate dining room, known as the ''Rose Room'' was next to be closed. The Rose Room's closing was followed in November 1989 by the cancellation of the Hotel's Sunday buffet brunch.[4]

These closings represent only some of the cost-cutting measures utilized by the Hotel in response to its declining business levels, but they are important. Several witnesses testified that ''things were slow'' when they were working. Second, the testimony also established that the closing of Sadie's and the Rose Room and the cancellation of the Sunday brunch did not result in the immediate layoff of employees. Thus, by December 1989, the Hotel had to finally address the impact of the continued business loss and the closing of certain of its regular functions on its work force. Although the Hotel tried to maintain all of its current work force by reducing the hours of most of its employees, this resolution was unacceptable to both the employees and their managers. Almost all the employees (particularly the full-time employees) complained about the reduction and in some cases even the entire elimination of their hours in a particular week, while the managers were confronted with the problem of trying to ensure that everyone received some hours—a scenario that made scheduling in some departments (such as in the A La Carte restaurant) extremely difficult and hampered the Hotel's ability to provide consistently efficient service to guests and other customers. In short, by December 1989, the Hotel, which had not had to resort to significant layoffs and cutbacks in the past, was forced to respond to economic and business realities of the late 1980s by reducing its work force as it saw no other alternatives.

The General Counsel paints a different picture of the Hotel's cost-cutting measures, laying their motivation not at the feet of economic necessity, but in furtherance of the Hotel's aim to defeat the organization of its work force by Local 217. The union campaign began on April 20, 1989, with the distribution of leaflets and questionnaires at the Hotel by Local 217's area director, Rob Traber, and other union representatives. The initial effort was followed by a similar one on May 20, 1989, and a third one on July 27, 1989. During the months of August and September, union representatives phoned and visited employees at their homes to determine the level of interest among them. By the end of September, an organizing committee had been formed among the employees whose task was to talk with coworkers about the Union and eventually solicit their support. This committee consisted of approximately 20–25 employees who worked within the Hotel's various departments.

On October 5, 1989, the Union conducted the first in a series of weekly organizing committee meetings designed to educate the members about the Union, organizing in general, applicable labor laws, and expected responses by the Hotel to the campaign. Over the following month and a half, the meetings were conducted twice a day on Thursdays and were held at the Labor Council building in Waterbury. In the middle of November l989, the meeting day was switched to Tuesday.

On November 14 and 15, 1989, during union organizing meetings conducted on those dates, Traber asked those in attendance to sign a recognition petition which would be used as a public showing of the Union's support. Those in attendance signed the petition and returned it to Traber.

The following week, on November 21, 1989, Traber asked committee members to sign authorization cards, which all but one did. He distributed copies of the petition which had been signed on November 14 and 15 and asked members to begin soliciting signatures from their coworkers. He also gave blank authorization cards to each committee member to get coworkers to sign as well, instructing the members to solicit during nonworking time and to initial and date any card signed.

During the ensuing weeks, the committee members obtained signatures from the majority of their fellow employees within the unit which the Union was seeking to represent. The committee also distributed and posted at the Hotel documents protesting the termination of committee member, Roger Sauvageau, and the Employer warning given to fellow committee member, Eliza Svehlak. Each document either listed the names of committee members or contained their signatures. One of these documents was hand delivered to Calabrese in mid-November.

On December 14, 1989, after obtaining a majority of signed membership cards, Traber met with union supporters in the Hotel's parking lot and Wanda Washburne, a waitress and committee member, was selected as spokesperson of the group. The group then proceeded to Calabrese's office where they presented their authorization cards and petition to Calabrese and demanded recognition. Calabrese refused to recognize the Union and the group returned to the parking lot where Traber distributed to the committee members a letter he had drafted prior to the demand. This letter, which summarized the circumstances surrounding the demand and listed the names of the committee members and their respective positions, was posted at various locations throughout the Hotel and distributed to employees.

On December 15, 1989, the Union filed a representation petition with the Board, and pursuant to agreement of the parties, an election was set for January 25, 1990. On January 9, 1990, Traber distributed to the members copies of another petition, stating that those signing the document would be voting ''yes'' for the Union in the election. Over the following week and a half, the members obtained additional signatures from their coworkers. The individual petitions were then returned to Traber, who in turn cut and pasted the signatures in order to create a single ''Union Yes'' petition. Copies of this petition were then mailed to all of the Hotel's unit employees and distributed directly to the committee members on January 23, 1990.

[4] None of these three events are alleged to be violations of the Act although they were included in the initial charge in Case 34–CA–4628.

On January 25, 1990, an election was conducted and the Union lost, 104 to 62, with 21 challenged ballots. After the election, the Hotel in the spring of 1990 conducted further layoffs in its restaurant and thereafter changed hours in the laundry department and fired committee member Eliza Svehlak. These postelection activities were alleged to be motivated by a desire by the Hotel to finally rid itself of certain of the Union's most ardent supporters.

During the campaign leading up to the election, the Hotel was shown to have knowledge of the Union's campaign from its outset and of the union committee members' identities from at least mid-November 1989. The Hotel conducted its own campaign against the Union, hiring legal specialists and a labor consultant. With their advise the Hotel held meetings with employees and distributed and posted various documents explaining the Hotel's position and urging the involved employees to reject the Union. General Counsel alleges that certain statements made by management during these meetings and statements contained in material distributed or posted are in violation of the Act. General Counsel also alleges that the reduction in hours and layoffs which occurred during the campaign were unlawfully motivated and aimed at union supporters, in violation of the Act. It is further alleged by General Counsel that during the campaign the Hotel unlawfully threatened its employees, unlawfully interrogated them, engaged in unlawful surveillance of their activities, unlawfully changed employees hours of work and work duties, and unlawfully warned and discharged employees.

It is ultimately alleged by General Counsel that Respondent's unfair labor practices were so egregious that the possibility of conducting a further fair election are impossible, and as the Union represented a majority of unit employees as of the date of the demand for recognition, that a *Gissel* bargaining order should be issued against the Hotel. The Respondent Hotel contends it committed no unfair labor practices and, assuming arguendo, that it did, that they were insignificant and should not result in the issuance of a bargaining order or the direction of a second election. The Hotel also contends that the Union never represented majority of its employees, and that the authorization cards used for that purpose cannot be counted because they were improperly obtained.

The various allegations of unfair labor practices and corresponding objections to the election will be discussed and decided below under appropriate subheadings and groupings.

B. *Respondent's Alleged Unlawful Actions During the Campaign*

As noted above, the consolidated complaint alleges a number of violations of Section 8(a)(1) and (3) of the Act. Each of these allegations will be discussed and decided below at the point of discussion. With respect to the alleged 8(a)(3) allegations, the Board set forth in *Wright Line*, 251 NLRB 1083 (1980), the causation test to be used in all cases alleging discriminatory discharges. The General Counsel must make out a prima facie showing that protected conduct was a motivating factor in the employer's decision; the burden then shifts to the employer to demonstrate the same action would have taken place even in the absence of protected conduct. This causation test will be applied to each case of alleged discrimination because of discharge, layoff, or loss of hours of the Hotel's employees.

It is undisputed that Respondent had early knowledge of the union organizing activity at its facility and knowledge by mid-November 1989 of the identities of the Union's primary employee supporters. It is also undisputed that Respondent did not want its facility organized by the Union and engaged in a vigorous campaign to defeat the organizing effort. Respondent began its campaign with a decision by its owner, Calabrese to treat the union organizers carefully and to follow the advice of its legal and labor advisors carefully. Based on the evidence of record, I believe that in the main, Respondent's general manager managed to follow this course; however, I find that Respondent's owner, Bair's absence, and several of its lesser managers, departed from wise counsel and committed unfair labor practices. These matters will be discussed in detail at the appropriate point in this decision.

In any event, Respondent's campaign began in October 1989 with Calabrese and Bair conducting employee meetings. During one October meeting, Calabrese discussed issues concerning the Union, indicating a suggestion box would be set up, and stated that a union was needed at the Hotel. During an October meeting, Eliza Svehlak, a laundry employee[5] and committee member, asked Calabrese several questions including why the laundry employees and housemen were not given a bonus for weekend work—a bonus the housekeepers were receiving. Calabrese responded by stating that he would look into the bonus payments. The following day, Svehlak was informed by her supervisor, Kathy Tavares, that she would be receiving a bonus for weekend work.

At another October meeting waitress Barbara Racine was outspoken. Calabrese said at that meeting that he was aware of the Union's activities in the parking lot, but that he was unaware of any problems at the Hotel, that he always treated his employees fairly, and that if there were any problems, employees should speak directly to Bair or himself. Racine stood up and said that if they treated everyone so fairly why had so many employees been fired or quit. In particular, she questioned why he had fired former Restaurant Manager Mary Cercola as she was the best manager they had. Calabrese said that Bair could better answer the question. Bair then said he regretted firing Cercola, but it was a personal matter which Racine could speak to him about later. Waitress Gina Clay was also at that same meeting and complained about not getting breaks, and not being paid a meal credit. Calabrese said that he would try to do something about that.

These meetings are not alleged to be have been in violation of the Act. However, Respondent is alleged to begun about the same time a course of threats, interrogation, and surveillance which violation Section 8(a)(1) of the Act.

[5] Respondent contends, I believe incorrectly, that Svehlak was a statutory supervisor. This matter will be addressed with the matter of her discharge by Respondent.

1. Alleged unlawful threats, interrogation, and surveillance[6]

a. *Alleged threat to Roger Sauvageau*

Maintenance employee Roger Sauvageau testified that on Friday October 13, 1989, he went to the Outside Inn, a bar frequented by some Hotel employees, for the purpose of attending a going away party for two waitresses. He testified that at one point in the evening in response to a question from another employee in attendance, Pam Robanetti, he said that the Union stood a good chance of getting in. Sauvageau then testified that shortly thereafter, Respondent's executive housekeeper, Kathy Tavares, who was sitting nearby, leaned over and said to him: ''You better watch out, you're one of the ten on the list.'' Sauvageau responded: ''I am glad I made the list.''

Sauvageau construed Tavares comment to be a threat that he was on an Employer ''hit'' list. Tavares acknowledged having knowledge prior to this date that Sauvageau was a union supporter, but denied making the statement. I frankly did not find Tavares to be a very credible witness and do not accept her denial without some confirmation from other sources.

Sauvageau testified that when this exchange occurred between himself and Tavares, Robanettie and another person had just left to go to the bathroom. Another employee in attendance, waitress Linda Purcaro,[7] was called by Respondent to testify about the incident. She acknowledged that at one point Sauvageau did make some comments she could not remember about the Union, and was told by another employee to be quiet. She further testified that she did not observe Tavares say anything to Sauvageau. However, she acknowledged that she was sure that she went to the bathroom that evening. As she confirmed that Sauvageau did talk about the Union that evening and was not present at all times thereafter, I cannot find that her testimony contradicts that of Sauvageau and in at least one regard supports it. In conclusion, based on the testimony about this incident, which is supported ultimately by the fact that Sauvageau was discharged fairly shortly thereafter, I credit Sauvageau's version of the incident.

Standing totally alone, and given the atmosphere in which the statement was made, I am not certain it would be violative of the Act. However, taken as part of a pattern of action with Sauvageau, including a subsequent warning and discharge, I consider it both prophetic and coercive, and intended to stifle his further activities in support of the union campaign. As such, the statement does violate Section 8(a)(1) of the Act.

b. *Alleged threats to Eliza Svehlak*

The complaint alleges that on the day following the Outside Inn threat to Roger Sauvageau, October 14, 1989, Tavares had a conversation with Eliza Svehlak regarding the gathering the night before. According to Svehlak, Tavares stated: ''Roger didn't stop running his mouth about talking to the employees about the Union,'' and that ''he already had a black mark against him,'' and ''he could be fired for it.''

Tavares denied this conversation ever took place and on brief, Respondent contends that it is not consistent with what took place at the Outside Inn and it is not possible to characterize Sauvageau's comments as ''running his mouth off and talking to employees about the Union.'' I disagree. Not only was Sauvageau talking to employees about the Union at the Outside Inn, but according to Respondent's witness, was told to be quiet about it by another employee. Moreover, Tavares testified that prior to the Outside Inn incident, ''Roger didn't hide the fact that he was in the union,'' and that all the employees were talking about how they wanted a union'' and Savageau ''was saying it so loud. You could overhear him.''

Because I do find this alleged statement by Tavares consistent with both the Outside Inn incident and with her other observations about Sauvageau, and as I consider Svehlak a more credible witness that Tavares, I credit Svehlak's testimony about the conversation. The statements made by Tavares are clearly coercive tying, as they do, union advocacy with the possibility of termination. I, accordingly find that this statement by Executive Housekeeper Tavares in violation of Section 8(a)(1) of the Act.

Svehlak also testified that at the beginning of October, she had a conversation with Tavares in the laundry room. She recalled Tavares commenting about how hard a time her husband was having with his union and said why would anybody want a union. Svehlak said that she thought it would be a good idea to have a union, to which Tavares replied, ''she wouldn't be able to come down to help or send anybody else down to help.'' Svehlak then said: ''Well, you shouldn't have to, if we had enough people down here we would—we wouldn't have to ask for help.'' Tavares then said that Svehlak ''wouldn't be able to leave at 2:30 if the union got in, otherwise I could be fired.''

To understand the reference to hours, one must know that Svehlak left work at 2:30 p.m so that she could be home when here children arrived from school. This was about a half hour earlier than the end of the work shift and in order to accommodate Svehlak, Tavares would occasionally send someone down to help the laundry employee after Svehlak left.

Respondent has three defenses to this conversation. First, Tavares denies that it took place. I do not credit the denial. Svehlak was not a devious witness and did not appear to be making this story up out of whole cloth, as Tavares' denial would suggest. Respondent contends, with merit, that as of the beginning of October the Hotel would not have known Svehlak was a union supporter. On the other hand, the Respondent did know as of this date that a union campaign was underway. With that knowledge, it did not make any difference whether Svehlak was a known adherent or not. A threat of loss of privileges or loss of employment if the Union is selected is obviously coercive and has as its clear goal the desire to restrain the employee in the exercise of free choice.

The Employer's third defense is that Svehlak was a statutory supervisor and, thus, all allegations based on actions allegedly taken against her, except 8(a)(4) allegations, cannot violate the Act. To the contrary, I cannot find that Svehlak possessed any of the significant indicia of supervisory status.

[6] I will also address one alleged incident of unlawful discrimination in this section. This incident deals with the alleged discharge of Rita Sinclair and will be discussed at this point because of my credibility findings with respect to Sinclair's testimony.

[7] Rovinetti, a supervisor at the time of the incident, was not called.

She did not hire, fire, discipline, transfer, suspend, layoff, recall, promote, or reward other employees or adjust grievances at any time during her employment with Respondent.

She wore a name tag that read, ''Eliza Svehlak—Laundry Supervisor.'' She was paid 55 cents per hour more than the three other employees in the laundry, which was housed in a room in the Hotel's basement. Svehlak considered herself a working supervisor, differentiating this position from that of an actual supervisor. She performed the same tasks as the other laundry room employees.

Her duties were described by her supervisor, Tavares, thusly: ''She watched the girls down there. She signed the chemical slips when they came in. She was to keep in touch with the managers of the other departments on a regular basis, how they were doing with their linen, and she would help me evaluate how the girls were doing down there.'' Svehlak never gave a written evaluation, however, and there is not showing she could discipline or recommend discipline for another laundry room employee. If a laundry employee was going to be late, that person called in to Tavares, not Svehlak.

Respondent makes the contention on brief that Svehlak had the independent authority to allow employees to leave early and Svehlak apparently believed she he had this limited authority. However, this contention is totally belied by the situation which gave rise to Svehlak's termination. This purported authority was either taken away or its exercise was punished in May 1990.

To be found to be a statutory supervisor, one must ultimately be shown to be able to independently exercise the indicia of supervision. Except to the extremely limited extent that Svehlak could decide perhaps the order in which laundry would be handled and perhaps which of the laundry employees would do some function in the laundry process, I do not believe she either exercised independently or had the power to exercise any significant indicia of employment. She believed that she was properly in the bargaining unit and I agree. At most, I believe she could be called a leadperson.

As I credit Svehlak's testimony over that of Tavares, and as I find that Svehlak was not a supervisor within the meaning of the Act, I find that Tavares' threat herein discussed was a violation of Section 8(a)(1) of the Act.

c. *Alleged interrogation of Victor Little and impression of surveillance*

Victor Little is employed by the Hotel as a houseman. He testified that in October 1989 he had a conversation with Assistant Housekeeper Todd Tavares and then sports complex attendant David Baldrush in the Hotel's sports complex. Baldrush subsequently became supervisor of the complex. Little testified that T. Tavares asked him who attended the union meeting held the night before. Little did not respond, and T. Tavares then said, ''they needed a union.'' Little did not respond to this comment either. Little then changed his testimony to say that he did state he had attended the meeting and Eliza Svehlak had attended the meeting as well. T. Tavares then said, ''they already knew who was there anyway.''

I do not credit this testimony. Little gave an affidavit to the Board dated March 16, 1989. In this affidavit, he stated that the alleged conversation took place in late November or early December 1989, not October as he testified. General Counsel attempted to clarify this inconsistency by asking Little why he thought the meeting took place in October. Little answered: ''Well, the best I could say is from the—when the first union meeting was, the meeting with Todd Tavares and Dave Baltrush had to be very close to that because they asked me about who was at the first union meeting. So common sense. It's very close to that very first meeting.'' General Counsel then asked if Little remembered that at the time Little gave his affidavit. Little said he did not. If the affidavit is incorrect, having been given almost 8 months before Little's testimony and far closer in time to the alleged occurrence, and to make sense of the conversation Little now assumes as a matter of common sense that it must have taken place in October, then Little's memory with respect to this alleged conversation is placed in serious doubt. T. Tavares denied having engaged in the conversation and I credit his denial.

d. *Alleged threats, interrogation, impression of surveillance, and termination of Rita Sinclair*

Rita Sinclair, a housekeeper at the Hotel, is involved in a number of the allegations in the complaint, including one that she was unlawfully discharged by the Hotel. All of these allegations will be discussed together as their resolution turns in large part on Sinclair's credibility.

The first allegation arises from the testimony of Sinclair that she called her supervisor, Kathy Tavares, in November 1989 asking to return to work early from maternity leave.[8] Her maternity leave was scheduled to end on December 31, 1989, but she testified she wanted to go back earlier as her unemployment compensation payments had stopped because someone at the Hotel had informed the State that there was work available for her. In any event, when she asked Tavares about returning, Tavares allegedly said: ''Are you going to join the union, because there's a lot of bullshit going down about the union?'' Tavares then told her that: ''if I am going to join the union that she wouldn't put me back on schedule.'' Sinclair said she was not going to join and Tavares indicated she could start work the next day. Tavares admitted that Sinclair called in November and requested to return to work early and that she granted the request. She denies the remainder of this alleged conversation.

Sinclair also testified that in January 1990, she and Tavares had a conversation wherein Tavares said she had heard that Sinclair was talking with other employees about the Union. Sinclair denied this. Tavares then said she had heard that Sinclair had joined the Union, and Sinclair denied this. Tavares then allegedly said, ''that she didn't need the bullshit, because she didn't need to be hassled by her bosses, and that it ain't going to do nothing but start trouble for me.'' Sinclair's affidavit given to the Board relates part of this alleged conversation, but does not state that anything was said about ''starting trouble for me.'' Tavares denies having this conversation.

Sinclair claims she was discharged by the Respondent in January 1990. Sinclair testified that her dismissal arose out of an incident when she called Tavares in January to tell her that she would miss work for a few days because her child was ill. She testified that Tavares said that was okay because

[8] This call was made from a neighbor's telephone as Little did not have one.

business was slow. Four days later, Sinclair called back in to request to be placed back on the schedule and was informed that she had been discharged for being off work for more than 3 days. Little responded that Tavares had known she would be off for several days, and Tavares indicated that she just had to let her go. Contrary to her testimony, Sinclair's affidavit given to the Board states that she called in every day she was absent.

Sinclair also testified that in May 1989 she missed a day of work and was asked by Tavares on her return why she did not call in. She pointed out that she did not have a phone and that if she did not report for work within 10 or 15 minutes of starting time she would not be coming. Tavares said this was okay because Sinclair did not have a telephone. After this occasion, Sinclair failed to show up for work without calling six different times. She testified that she was not disciplined on any of these occasions, nor was she disciplined in December 1989 or January 1990, except for her discharge.

Sinclair's personnel file contained a warning dated December 22, 1989, for failing to report for work on that date. Little testified she did not remember receiving this warning though her signature appears thereon. Her file contained two other similar warnings for the days of January 9 and 10, 1990.

She also testified that without calling in she missed 2 days of work in June and 3 in July 1989 for planned hospital stays. Although she did not call in about these absences, she did give the Hotel advance notice of the hospital stays. She also testified that she applied for a jobs at other employers beginning in the second or third week of December 1989. As a result of these applications she testified she was offered new employment at a higher rate of pay a couple of days after she was discharged, with a report date for work beginning in the middle of January 1990.

Sinclair's personnel file contains a document dated January 11, 1990, noting that Sinclair resigned that date because she had another job. Tavares testified that on January 11, Little's brother came to the Hotel, returned Sinclair's uniforms, and informed Tavares that Sinclair would not be returning as she had another job. Bruce Bieler, comptroller of the Greenshire School in Cheshire, Connecticut, testified that Sinclair began to work at the Greenshire School on January 9, 1990. Sinclair's timecard for that employer indicated that she worked on January 9 and 10, 1990. School records also note that Sinclair was terminated effective February 20, 1990, and that she left without giving notice.

I find that Sinclair's testimony is not credible. She did not tell the truth about the reason for her absence from work at the Hotel on January 9 and 10. She was absent because she had taken other employment, not because her child was ill. She did not tell the truth about when her new employment was offered to her and about when she started this employment. Respondent's records indicated Sinclair was not discharged, but instead resigned on January 11 because she had another job. These records are entirely consistent with the facts whereas Sinclair's testimony is almost entirely inconsistent with the credible facts about her employment. As I have found that she did not tell the truth about her employment, and as there is no independent corroboration about the other incidents about which she testified, I do not credit her testimony in these regards either. For the reasons stated with respect to Sinclair's testimony, I credit Respondent's denials and find that it did not violate Section 8(a)(1) or (3) in its dealings with Sinclair, as alleged in the complaint.

2. The alleged acts of discrimination

a. *Warning to Roger Sauvageau*

Sauvageau was issued a written warning by General Manager Richard Bair on October 29, 1989. The warning states: ''Roger was on property while off the clock and not on the schedule. He was in unauthorized areas of the Hotel conversing with employees who were on company time.'' The Hotel's written policy on this subject is that ''Employees not scheduled to work are not to be on the property unless to confer with the personnel department, their supervisor, department head or to pick up their paycheck.'' General Manager Bair testified that an off-duty employee can come to the Hotel restaurant or employee cafeteria with prior permission of a manager. Bair testified that unless an employee is working, and has a specific reason for being there, employees are prohibited from entering the guest room area of the Hotel. This was the first discipline ever issued to Sauvageau, who had been employed by the Hotel since its opening in 1985 and was issued shortly after his warning by Kathy Tavares that he was on a management list at the Outside Inn on October 13.

Interestingly, the written warning issued October 29 also originated with Kathy Tavares, who claimed to have seen Sauvageau both in the Hotel's maintenance room and on the fourth floor guest room area on October 29, a day he was not scheduled for work. She testified that on the fourth floor, he was talking with one of the Hotel's maids, Cheryl Arroyo, who later told her that Sauvageau was soliciting and asked that he be stopped from doing this. However, in her interview with a Board agent about this matter, Tavares only said she had seen Sauvageau in the maintenance room or in maintenance. The matter of soliciting union support from maids on the fourth floor was not mentioned.

I did not believe the testimony of Tavares about seeing Sauvageau on the fourth floor when I heard it and given the fact that this alleged fact was not pointed out to the Board agent, I do not credit this testimony. Neither Arroyo nor any other maid who was mentioned as being present on the fourth floor on the October 29 was called to testify.

As noted earlier, Sauvageau was a member of the union organizing committee and an outspoken advocate of the Union. Although he was aware of the Hotel's rule about visiting the property while off duty, Sauvageau testified he had gone to the Hotel on his day off about twice a month on a regular basis. On these occasions, he would go to the employee cafeteria and talk with other employees there. He testified that he had been seen doing this by Bair, his immediate supervisor, Joe Mercier, and Kathy Tavares. Although on one occasion Bair had inquired about his presence in the cafeteria, he did not take any action or tell Savageau to cease the activity.

Sauvageau testified that on October 29 he went to the Hotel though it was his day off. He first went to the employee cafeteria and finding none of his coworkers, went upstairs to the maintenance room. He was seen entering the maintenance room by Kathy Tavares, who asked what he was doing there. He told her that he was going to see the

''guys.'' Sauvageau testified that he met with coworker Rich Luddy, who was taking a coffeebreak, and urged Luddy to join the Union. After speaking with Luddy, he left the Hotel and went home.

Sauvageau testified that on the next day he was reporting to work when he met the Hotel's owner, Calabrese in the Hotel parking lot. According to Sauvageau, Calabrese said: ''I was going to have Mr. Bair talk with you but I'll talk to you myself.'' Calabrese started saying that Sauvageau had been on the property on his day off, signing up people for the Union, and Sauvageau denied signing up people. Calabrese replied that a manager had informed him that Sauvageau had been so engaged and offered to bring the manager out. Sauvageau replied, ''Well, you bring the manager out and I'll call him a liar.'' Calabrese then said that he could not afford to have a union, that he was having a hard time and he could not understand why people could not understand this. Calabrese then indicated he was going to give a speech to employees and Sauvageau said he already knew what was in it. Calabrese then indicated that he knew what his rights were, and Sauvageau said he had been in a union for 33 years and knew what was going on as well.

Calabrese acknowledged that at least some of this conversation occurred as related by Sauvageau, but because of the passage of time, he could not remember everything that was said. He did admit discussing the Union with Sauvageau on one or more occasions. He was also consulted about this matter by Bair, although Calabrese does not normally get involved in such situations.

Sauvageau admitted that October 29, 1989, was the first time he had ever gone to the maintenance room or any other part of the Hotel in its guest room area. To get from the cafeteria to the maintenance room, he had to go down a second floor hallway which evidently passed some guest rooms. It is clear from the testimony of Respondent's witnesses that Sauvageau's warning was issued on the basis of Sauvageau being on the Hotel's fourth floor guest room area and not because he was in the second floor maintenance room.

After careful consideration, I agree with General Counsel that Sauvageau was given a warning because Respondent's management, and particularly Calabrese, believed he was soliciting support for the Union. That he was on Hotel property on his day off in violation of a Hotel rule was an excuse for punishing him for this activity, and not the actual basis for the issuance of the warning. Even though it is clear that Sauvageau went to the maintenance room and talked with Rich Luddy on October 29, clearly a violation of the Hotel's rules, this was not even mentioned as a reason for giving Sauvageau the involved warning. I believe this is because the Hotel had not previously enforced its rule so long as Sauvageau met with his own department coworkers in a logical place, such as the employee cafeteria or his normal workplace, the maintenance room, while he was off duty. The matter of the fourth floor solicitation which originated with Kathy Tavares was not mentioned by her as a reason for the warning before her testimony in this proceeding, though she gave an earlier affidavit which noted only Sauvageau's presence in the maintenance room. No on-duty employee to whom Sauvageau allegedly spoke was called as a witness. Sauvageau's immediate supervisor, Mercier, was not called as a witness though he would normally have been the one to issue a warning.

As I have found that Respondent issued a warning to Sauvageau for engaging in activities in support of the Union, and not for the reasons advanced by it, I find that it has violated the Act in this regard as alleged in the complaint.

b. *Warning to Eliza Svehlak*

On November 15 and 17, Svehlak was given warnings for harassing and threatening another employee, Anthony Flammia. The warnings are alleged to have been unlawfully motivated by General Counsel whereas Respondent asserts that they were necessary to maintain order among employees. Difficulty arises in making this determination because of the people involved. Flammia was described in the record by Calabrese as ''having a little problem'' and is evidently emotional and easily upset. It was apparent from both her demeanor on the record, and in an off-the-record discussion with all parties present, that Svehlak has a great deal of empathy with Flammia and would purposely do nothing to upset him. Flammia, perhaps understandably, was not called to testify in this proceeding and Svehlak herself had difficulty in addressing this particular matter.

Svehlak has a learning disability and had been in special classes all her life. She was very sensitive to the situation of Flammia, who also had a learning disorder, and broke down on the stand while testifying about these incidents.

As I will discuss below, the first warning was given for activity that under usual circumstances would probably never come to the attention of management, much less result in the issuance of a warning. The second involves a purported threat to slash automobile tires by Svehlak to Flammia. I do not believe her ''threat'' was directed at Flammia, but rather at Todd Tavares. However, again, under usual circumstances, even assuming the ''threat'' was made to Tavares, Respondent would have been justified in issuing a warning. However, because of Svehlak's personality and other factors relating to her personality which cannot be conveyed to one not at the hearing, I cannot believe that Tavares or anyone else involved in Respondent's management took the ''threat'' seriously. Significantly, when the November 17 event occurred, Bair was away from the Hotel on other business.

On November 15, 1989, Svehlak had a conversation with Flammia, a houseman, during which she asked him how he felt about the Union. He asked Svehlak whether he would be required to attend the union meetings should he choose to join. Svehlak said that she would speak to union representative Rob Traber and get back to him.

Tavares testified that on this date Flammia had come to her upset and told her that Svehlak was needling him about not signing something, calling him stupid, and ''flapping her wings'' and calling him a chicken. Based on my observation of the entire testimony of both Svehlak and Tavares, I cannot conceive of Svehlak calling Flammia stupid or in any other way demeaning him. On the other hand, I can conceive of Tavares spicing up what Flammia may have told her. Tavares told Flammia to just ignore Svehlak and go about his duties. Tavares was Svehlak's immediate supervisor. If Flammia had been harassed by Svehlak as indicated by Tavares testimony, why did she not confront Svehlak and put an end to it herself. I believe the reason is that Svehlak was not harassing Flammia.

Tavares further testified that shortly thereafter, she received a call from Maintenance Supervisor Mercier, who ad-

vised her that Flammia was sitting in a corner on the fourth floor of the Hotel, crying and shaking. She went to Flammia who said Svehlak was bothering him. Again, Tavares took no direct action as Svehlak's supervisor, but instead, called Petra Ortiz, the Hotel's room division manager at the time, and Ortiz said she would take care of the situation. Ortiz and Tavares later met with Svehlak and gave her an oral warning for this incident, with Tavares telling her that she would get a warning if she did not stop soliciting. Svehlak was upset by this and in the company of three other employees went to the ladies room so she could calm down. Ortiz came in asked Svehlak if there was anything she could do for her. Svehlak replied she wanted nothing from her and that, ''you made me determined and I'm going to do anything I can [to help get the union in].''

On November 17, Svehlak saw Flammia before she began work and she said she was sorry if he thought she was harassing him. Flammia replied, ''Well, you didn't really harass me, its just the talk.'' He was also upset on the October 15 by two maids who were giving him a hard time because he did not get their towels to them on time.

About 10 a.m. on October 17, Svehlak was taking a break, sitting in the employees' entranceway with some other employees talking about the Union. About this time, Todd Tavares and Flammia left the building and went into the parking lot. On their return, Svehlak said to Tavares, ''Oh, you're showing off your new car. Well, maybe, I'll go out and slash your tires.'' She testified that she was kidding and Tavares confirmed that she was laughing. She testified that he laughed and said, ''yeah.''

About 45 minutes later, T. Tavares came to the laundry room and told Svehlak that Ortiz wanted to see her. She called Ortiz and asked if she could bring a witness and was told yes. She and her witness, fellow employee Wanda Washburne, then went to Ortiz' office. In the office were Ortiz behind her desk, K. Tavares beside the desk, Svehlak and Washburne in front of the desk, and Todd Tavares standing behind them.[9] Ortiz informed Svehlak that she had a written complaint from Flammia and that she was receiving a written warning for threatening to do damage to Flammia's truck. The warning threatened termination for the next incident.

Svehlak said she had not threatened Flammia, but had just been fooling around with Todd Tavares. Ortiz said that is not what she had heard and that she had witnesses, though not naming them.

T. Tavares testified that both he and Flammia had new trucks. He said that the tire-slashing statement was directed at Flammia and was overheard by other employees, naming Heidi Elbert, Celinda Foote, and Cheryl Arroyo. These employees were not called to testify. Nor was the written complaint from Flammia put into evidence.

I credit Svehlak's version of the above events over the version given by Kathy and Todd Tavares. I do not believe that Svehlak would threaten Flammia, even jokingly. I fully believe that she would jokingly threaten T. Tavares with whom she had a playful relationship. Respondent on brief argues the remark about slashing tires must have been directed to Flammia as Svehlak apologized to him. The apology occurred before the ''threat'' and involved the events of November 15. I agree with Respondent that no employee should be permitted to threaten to slash another employees tires. However, she was not disciplined for threatening to slash Todd Tavares tires, but Anthony Flammia's tires.[10] As in my opinion Respondent has chosen to tamper with the facts of the incident to both strengthen its position and to hit Svehlak where she is known to be most vulnerable, I believe its reason for issuing the warnings was pretextual and had as its true purpose, the unlawful desire to stop Svehlak from engaging in her union solicitations. Accordingly, I find that Respondent has violated the Act as alleged in the complaint.

c. *Warning to Victor Little*

On November 30, 1989, Kathy Tavares gave Victor Little, a houseman, a warning for not completing his job the previous day. The Hotel was performing inventory on November 29, 1989, and in order to perform the inventory accurately, all linen must be counted at the end of the day. Therefore, all dirty linen must be taken off the floors by the housemen and brought to the laundry to be cleaned and counted. At the end of Little's shift there was a cart of dirty linen left on the floor for which he had responsibility. This was reported to K. Tavares by Inspectress Sarah Frankenfield, who said that Little had left without completing his duties.

Tavares took the linen to the laundry herself. The following day, Tavares and Inspectresses Frankenfield and Yong Morelli met with Little who admitted leaving the linen, but said he had been instructed by another inspectress, Flo Cordon, to leave it and she would take care of it. In response to Tavares' remark that it was not Corden's linen, Little said that another maid, Margaret Saunders had been present at the time and could straighten the matter out. Little at this point left the office to get Saunders. Along the way he encounterd Roger Sauvageau and, after a discussion, Little proceeded to the employee cafeteria to find Saunders. As will be discussed below in detail, Sauvageau and several other employees went to Tavares office to witness Little's warning and plead his case. A confrontation erupted which resulted in Sauvageau's discharge.

After the confrontation, Little and Saunders offered an explanation about the dirty linen supposedly left by Little. Tavares testified that she was too upset by the earlier confrontation to pay attention to what was said by the two and told Little to be careful next time. Little testified that he never knew he was given a warning on November 30 as he did not recieve a copy of the warning. He did testify though that he knew he was going to be given a warning that day and Tavares testified that employees are not given copies of their warnings unless requested.

I find nothing unlawful about this warning. I can find no no signs of antiunion motivation in its issuance and Little did leave the dirty linen as stated in the warning. Although Little

[9] Svehlak had known Todd Tavares, the son of Kathy Tavares, for about 7 years, dating back to a time when she and K. Tavares worked together as maids at another hotel. She said she and T. Tavares got along good and that he would come to the laundry room and engage in horseplay with her.

[10] On this point, Respondent was not so upset about the threat made by employee Steve Barone who cursed and threatened to ''kick the ass'' of waitress Laurie Grenier for her union sentiments. Rather, he was not disciplined at all and was made the Hotel's observer at the election.

was a known union supporter, there was no showing of disparate treatment and, to the contrary, Respondent demonstrated that it had given a similar warning to another houseman in the summer of 1989. Lacking proof of improper motivation, and lacking proof that the warning was incorrectly issued, I will recommend dismissal of this complaint allegation.

d. *The discharge of Roger Sauvageau*

As noted above, Little encountered Sauvageau on his way to find a witness to bolster his explanation of the situation which caused him to receive a warning. In his meeting with Sauvageau, Little explained what was happening to him. Savageau determined that Little needed support and together with Eliza Svehlak went with Little and Saunders to Tavares office. There ensued a confrontation which, as noted above, resulted in Sauvageau's discharge. There are as many variations of what transpired during the confrontation as there were witnesses to the event. However, in the end, I believe that the end result, the termination of Sauvageau, occurred because Calabrese had grown weary of Sauvageau's almost continuous, noticable activity in the Hotel on behalf of the Union. As was the case when other dramatic action against union supporters took place, Bair was away from the Hotel and Calabrese alone decided on a response to a situation.

A brief description of the confrontation from the various witnesses to it follows. Sauvageau testified that he and the other employees entered Tavares' office and Tavares immediately told them to get out of her office, that they had no business there. She began screaming for them to get out and that Little needed no witnesses. Sauvageau testified that he told her that they were there to see what the problem was because Little was on the organizing committee. Tavares continued to tell the group to leave and they did.

Little's and Svehlak's versions of the incident are essentially the same as Sauvageau's though Svehlak added that Tavares said, ''I don't have to let anybody into this office if I don't want to.'' ''That is by law.'' The three employee witnesses all testified that Sauvageau did not threaten Tavares either by words or gestures.

Tavares testified that Sauvageau entered her office with the other employees behind him and she asked him what he wanted. He said, ''These are my people and I have to stay.'' Tavares then said, ''I don't know what you're talking about, Roger, but please leave my office.'' Sauvageau then said: ''I will not leave this office. I have a right to be here.'' She testified that he was sticking his finger in her face and threatening her.

She then got up from her desk and began backing up, telling him to leave. Sauvageau came over to her pointing and sticking his finger in her face. She testified that he kept saying, ''I'll fix you.'' At some point Tavares told him to ''get the fuck out of my office,'' and he did.

Inspectress Sarah Frankenfield, who was present, testified that when Sauvageau entered the office, Tavares asked him why he was there, and he responded that she was harassing his people. She testified that he pointed his finger at her and said you are harassing my people. According to this witness, Sauvageau kept saying ''you're going to get yours; you're going to get yours,'' while pointing his finger at Tavares and getting closer. Tavares said, ''fuck you,'' and he left.

The entire confrontation lasted between 2 and 5 minutes. Though generally one must accept one version or the other of a description of an incident, I am not sure that is possible here. Given my observation of the personalities involved, I believe the employee witnesses who said that Tavares reacted in a hostile manner to the entrance into her office of Sauvageau and Svehlak. I believe it would take provocation for Sauvageau to raise his voice and accuse Tavares of harassing union supporters. I believe he must have raised his voice or in some manner further angered Tavares, causing her to curse at him.[11] On the other hand, I do not believe the testimony about Sauvageau saying, ''I'll fix you'' or ''you are going to get yours.'' These are entirely different things for one thing and for another, what was Sauvageau going to do. After the confrontation, he merely went back to work. After Sauvageau and Svehlak left, Little and Saunders remained for a few minutes with Saunders saying something that Tavares does not remember. Tavares then contacted the Hotel's assistant manager, Tom Fallon, about the incident. Bair was on vacation at the time.

Fallon then went to maintenance and confronted Sauvageau, telling him he had no business in housekeeping, that he should not have been there and how would Sauvageau like it if he ''rang his card out.'' Sauvageau replied that he did not think he would and Fallon left the area. It should be noted that the housekeeping and maintenance areas are side by side in the Hotel. Todd Tavares then entered the area and said, ''You upset my mother and nobody upsets my mother and I don't care how big they are.'' Kathy Tavares then showed up and said to Todd Tavares, ''Don't bother with him, Todd, he's not worth it.'' Both Tavareses then left.[12]

Fallon informed Calabrese about the incident and though he had before been involved in only one disciplinary matter, and that involving a relative, he went to the Hotel and called a meeting in Bair's office of K. Tavares, Fallon, Petra Ortiz, Bair's secretary, Kathy Craig, and his wife, who is also part owner of the Hotel. After gathering these people together he asked Tavares what happened and as best as he could remember, Tavares said Sauvageau came into her area, shook his hand at her, and said we are going to get you or take care of you. He considered Sauvageau to have threatened Tavares, embarrased her, and abused her based on her statement. Other than Tavares, none of the people brought together for this meeting had any first-hand knowledge of the events in question. Calabrese was aware that other employees had been present during the confrontation, but none of these persons was interviewed. Calabrese indicated that it was unnecessary because the person involved, Sauvageau, gave him

[11] When Bair returned from vacation, he learned about this incident and issued a warning to Tavares for cursing at at employee. Bair at least recognized there may be two sides to this story.

[12] To put the matter of Savageau's threat in some context a reader may understand, Savageau is not a young man and not physically imposing. At one point, Tavares must have considered him a friend as she accepted a ride to Florida with him in September 1989. Given these circumstances, I find that even accepting Respondent's witnesses version of the confrontation, Savageau was insubordinate, but certainly not physically threatening.

the answer he was ''looking for.''[13] However, before Savageau became involved in the meeting, Calabrese called his attorney to find out if firing Sauvageau was proper.

Sauvageau was then summoned and as he entered the meeting Calabrese began stating that he had attacked a manager. Sauvageau asked for a minute to get a witness and started out of the office. Calbrese told him if he did not return immediately, he was fired. Thus he returned to the office where Calabrese said he had attacked his manager, he had no right to do that, and Calabrese was going to fire him. Calabrese indicated in his testimony that he first explained to Sauvageau what Tavares had told him and Sauvageau admitted doing what he said. However, in his affidavit given shortly after the incident actually took place, Calabrese stated, ''when Sauvageau arrived, I told him he screwed up and that he was dismissed.'' I credit the affidavit version of the events as it is far closer in time to the meeting that the hearing and more closely corresponds to the other witnesses' testimony.

Calabrese then referred to the employee handbook and said the Hotel went by the rules. Sauvageau said the handbook allowed the rules to be changed anytime the Hotel wanted, and Calabrese said he could change them. Tavares started to say something and Calabrese stopped her. Sauvageau was then told to pick up his tools and leave, which he did.

On brief, Respondent urges that Sauvageau was discharged for threatening Tavares. For the reasons set forth above, I do not find that Sauvageau threatened Tavares, though it could be said that he was insubordinate to a degree. However, I do not believe that Respondent can even rightfully contend that a threat was the reason Sauvageau was dismissed. Witness the Hotel's documented reasons for terminating him.

On December 14, 1989, Fallon, at Bair's request, attended Savageau's unemployment hearing and executed a statement of the Hotel's position regarding his termination. According to the statement, ''Mr. Sauvageau was discharged by the owner of the Sheraton, Joseph Calabrese, on 11/30/89 because he had left his authorized work area and entered an unauthorized work area.'' The statement made no mention of a threat made by Sauvageau to a manager or, more specifically, to Tavares.

In a similar statement executed by Ramin Hakim, the Hotel's controller, on December 11, 1989, in anticipation of Sauvageau's unemployment hearing, Hakim stated that, ''Roger was terminated because he left his work area without authorization, went to the Housekeeping Department where he caused a confrontation with a manager and was insubordinate when told to leave the area.'' Again there is not mention of a threat. This is the same language which appears on Sauvageau's termination papers.

I believe it is clear that Sauvageau was engaged in protected concerted activity when he accompanied Little to Tavares' office. He was acting as a witness and advocate for Little in Little's disciplinary meeting. Other employees had been allowed to have witnesses, for example, Svehlak was allowed to bring a witness to her disciplinary meeting with Petra Ortiz, discussed earlier herein. Thus, leaving his authorized work area and going to the housekeeping department was protected. Indeed, neither Svehlak nor Saunders, two other employees who came as witnesses while on duty, was not disciplined for this activity.[14]

Therefore, we are down to causing a confrontation and being insubordinate when told to leave the area. I find as a factual matter that Tavares caused the confrontation by taking a belligerent stance when Sauvageau entered her office. Was Sauvageau's behavior thereafter such to remove it from the protection of the Act and, if so, did the Hotel react in a manner consistent with past practice and its own rules? I do not believe that Sauvageau's conduct removed the protection of the Act from his actions in Tavares' office because of Tavares' provocation of him. However, even if it did, I believe that Calabrese's actions following the incident and a reveiw of past practice indicate that Respondent simply seized on the incident as an excuse to rid itself of one of its most ardent and visible union supporters.

As noted above, the decision to terminate Savageau was made by Calabrese without any investigation other that talking with Tavares and without asking Sauvageau for his side of the story. This is true even though there were numerous witnesses to the incident. The practice of the Hotel is to investigate before disciplining. Of course, it has also been the practice of the Hotel before Sauvageau for Calabrese to stay of the disciplinary process. Calabrese made no attempt to determine whether his discipline of Sauvageau was consistent with past practice.

With regard to issue of insubordination, Bair testified that employees are not necesarily terminated for insubordination as it depends on the severity of the situation and all the factors involved. This statement is borne out by Respondent's documents.

On June 6, 1989, Mahumet Redzep was given a warning for disobedience, and counseled without further discipline for: ''Mahumet was told to leave the premises. He had been off the clock for an hour, left and returned to Hotel. He ignored my orders to leave premises 3 times; then he lied and said he was leaving but minutes later was seen by men's room talking to Ed Appicela.'' This was Redzep's second warning.

On June 27, 1989, employee Ann Marie Cretella was given an oral warning for engaging in insubordination by using an improper tone of voice with her immediate supervisor. No punishment was administered.

On May 19, 1990, employee Paula Zelanin was given a written warning for yelling and scolding Lisa Brodeur, the restaurant manager. The warning states: ''Regardless of right or wrong, there is absolutely no place in this organization for conduct such as this. It will not be tolerated toward any employee, manager or other.'' Zelanin was forced to apologize to Brodeur and warned she would be terminated if she engaged in future similar conduct.

[13] I do think this is an inadvertent admission that Calabrese was looking for a reason to terminate Savageau. However, as a factual matter, I do not find that Savageau was asked anything about his version of the incident until he had been informed he was being fired.

[14] After Eliza Svehlak received her warning of November 17, 1989, a letter protesting the action was prepared and signed by the members of the organizing committee. This letter was presented by Sauvageau to Calabrese in the Hotel's Garden Cafe while Calabrese was having lunch. Savageau was on the clock at the time and had no duties in the restaurant. He was not disciplined for this activity nor was he ordered back to work by Calabrese. Therefore, being out of one's work area while on duty to engage in protected activity was allowed by Respondent on this occasion.

On October 30, 1989, employee Sandra Leo was warned for being disrespectful to a manager, talking back in a loud tone of voice in the Hotel dining room. She recieved only a warning that she would be terminated if she did this again.

On December 5, 1989, employee Scott Biondi was given a warning for shoving his manager and suspended for 1 week. Biondi stated on the warning form that he was wrong, was pushed to the limit, and acted irrationally. He was not fired. Bair investigated this incident at the time of its occurrence and decided the manager in question had overreacted. No such investigation was made in the case of Sauvageau.

In conclusion, Respondent's past unlawful warning to Sauvageau, its changing reasons for his discharge from the documented reasons to the testimony herein, the inconsistency between Calabrese's testimony and his affidavit, its disparate treatment of other employees accused of insubordination, its virtual lack of any investigation before termination contrary to normal practice and the timing of the discharge all lead me to conclude that the discharge was unlawfully motivated and find that no credible legitimate reason for Sauvageau's discharge has been advanced. Accordingly, I find that Respondent's discharge of Roger Sauvageau was in violation of Section 8(a)(1) and (3) of the Act.

e. *Change in Eliza Svehlak's hours*

At the end of November or the beginning of December 1989, Tavares informed Svehlak that her hours were being changed from 6:30 a.m. to 2:30 p.m. to 7 a.m. to 3 p.m.[15] Svehlak replied that when she was hired by the Hotel, she was told that she could leave at 2:30 p.m., because she had to be home to get her children off a bus. She told Tavares that she would hold her and Calabrese responsible if something happened to her children. Tavares replied, ''That's the way it is. The times are changing.''

Svehlak testified that she was given no explanation for the change. Tavares testified that she told Svehlak that all the other laundry employees come in at 7 a.m. and work until 3 p.m. She wanted Svehlak to work the same hours as the other employees and needed her more in the afternoon than in the morning. In response to Svehlak's note of her problem with her children, she said, ''Your children are not my responsibility.'' Tavares testified and Svehlak confirmed that at the time of the change, Svehlak did not actually begin work until 7 a.m., although she arrived at 6:30 a.m.

On brief, Respondent offers a variety of reasons why the changes in Svehlak's hours were changed. However, none of these reasons except the desire to have Svehlak work the same hours as the other laundry employees was articulated by Respondent's witnesses. Attorneys on brief cannot substitute their reasoning, however logical, for the reasoning of their clients. I agree that the timing of the change, especially the closeness in time to the threat by Tavares that if the Union got in, Svehlak would no longer be able to leave at 2:30 p.m., supports the General Counsel's position that the purpose of the change was to harass or punish Svehlak for her union support. The suddenness of the change, as well as the cursory explanation for the change given to Svehlak by Tavares, does reflect an attitude of mean spiritedness on the part of management toward Svehlak that does not appear warranted by her performance appraisals.

On the other hand, Svehlak agreed that she was not working during the half hour between 6:30 and 7 a.m. and management certainly has a legitimate interest in having its employees work while they are being paid.[16] As Respondent has demonstrated a legitimate business reason for the change in Svehlak's hours, I will recommend that this complaint allegation be dismissed.

f. *Layoffs and loss of hours in the restaurant prior to the election*

One of the most important elements of this dispute involves layoffs, loss of hours, and changes in policies in the Hotel's restaurant during November and December 1989. As opposed to the unfair labor practice allegations discussed above which involved a limited number of individuals, these changes affected many employees in a department that was likely the most intensely organized of any in the Hotel. Therefore, the allegations involving the restaurant would bear significantly on the ultimate remedy sought by General Counsel, a bargaining order. Because of the importance of these allegations, certain evidence offered by General Counsel, though not directly related to specific allegations of unlawful activity, will be set forth as it bears on the question of motivation for the Respondent's actions.

Prior to the union organizational effort in the fall of 1989, there was an informality to the way the restaurant service staff operated. Servers were responsible for finding their own replacements for scheduled shifts if they were going to miss work for some personal reason. Respondent made a red book containing all the servers' and managers' phone numbers available to employees so that they could find replacements for their shifts.

The Hotel had not history of laying employees off or cutting hours for lack of work. When business was slow in the restaurant, the waitstaff would first try to decide among themselves who would go home early. If no agreement was reached, then managers would send the employees home who came in earliest. This policy was introduced around 1988. Prior to that, the policy had been that a server had to call

[15] Par. 20 of the initial consolidated complaint dated June 29, 1990, stated as follows: ''[O]n or about December 5, 1989, Respondent changed the hours of its employees.'' In response to Respondent's motion for Bill of Particulars, General Counsel filed its amendment to consolidated complaint dated September 21, 1990. This document amended par. 20 to read: ''[O]n or about December 5, 1990, Respondent changed the hours of Eliza Svehlak.''

No further motion to amend this paragraph was made. Respondent contends that it should be dismissed. If the matter was one of substance, I would agree. However, the 1990 date is clearly a ministerial error and did not in any fashion mislead the Respondent as it replied fully in its testimony to this complaint allegation. It would serve no purpose whatsoever to dismiss this allegation without full discussion, other than to serve form over substance. It certainly would not further any legitimate purpose of the Act. Accordingly, I will address this allegation. Respondent makes several similar contentions with regard to other allegations and my ruling is the same with respect to them, whether specifically mentioned or not.

[16] General Counsel on brief indicated that he found no evidence that Svehlak was not working during this half hour. At p. 413 of the transcript, Svehlak testified in response to a question of what she did when she arrived at work on November 30, ''I sat down and had coffee, tea, whatever, and had a cigarette. I usually read my book until 7:00.''

in at least 4 hours before their shift and the managers would find a replacement.

Waitresses also routinely gathered together in groups of four or five employees during slow periods to fold napkins in the restaurant. It was common for waitstaff to arrive early and wait for the start of their shift either in the pantry or cafeteria. Similarly, when employees finished their shift, they would wait in various areas, such as the kitchen or cafeteria, for fellow employees to finish, or for rides. Sometimes they waited for rides in the office of the security guard at the end of the night, and were also escorted to their cars late at night.

Things changed in the restaurant after the card gathering began. The restaurant was a prime area for union activities. Six members of the waitstaff were on the union organizing committee which began seeking signatures on authorization cards on November 21, 1989. These six were: Barbara Racine, Laurie Grenier, Mark Sanderson, Gina Clay, Lisa Chilcoat, and Wanda Washburne. Between them they gathered, or themselves signed, about 65 cards, almost half of the all cards gathered. Much of the card gathering was done at work, including in the Garden Cafe, the pantry, the bar, the cafeteria, the restrooms, and the kitchen.

Barbara Racine and Laurie Grenier, two of the most active and outspoken union supporters who accounted for 41 cards by themselves, testified that they were watched and followed by managers as they performed their tasks. In late November, Grenier and waitress Grace Kelly were waiting in the bar at the end of the night for Restaurant Manager Brad Larson to sign them out. The bar was closed and the lights were out. There were no customers present. Grenier leaned against a bar stool. Larson told her to get her ''butt'' off the stool. Grenier told him that ''because of the way you treat us, and the way things are,'' was the reason that ''we want a Union in here.'' Larson told her to get her stuff and go. The next day, Larson informed Grenier that he had written her up and wanted her to sign the writeup. She refused, and said that he was only writing her up because she had mentioned the Union to him. Grenier complained about the incident to Calabrese and Bair that night, and asserted to them that it had ''to do with what was going on in the Hotel at the time.'' Calabrese said he would look into it. The following week, Larson apologized to Grenier and said the warning had been taken away.

In early December, Night Manager Doug Piel asked Grenier to speak with him in the Rose Room. She brought waitress Debbie Wilroy to be her witness. Restaurant Manager Lisa Brodeur was present as well. Piel told Grenier that there had been complaints that she had been harassing somebody, and that this person had received a warning because of her, and that she was to stop doing it. Grenier asked to whom he was referring, and what was it that she had purportedly said. Piel declined to answer her, and advised her to stop whatever it was. Grenier told him, ''you're sitting here giving me a warning about somebody for doing something I don't know anything about, and you won't tell me, you know. You and I both know what this is about.'' Piel simply again advised her to stop doing it.

Later, employee Mark Davis informed Grenier that Piel had given him a warning for being in the cafeteria out of his workplace and had asked him who had given him the card (evidently and authorization card). She asked Davis if he felt that she had harassed him, but he said no, that if anybody harassed him, it was Doug Piel.

Piel also summoned Barbara Racine in December to his office where he vaguely advised her that there were some problems, that people were saying things about her, and did she have any idea what it could be. She asked Piel if he had any problem with her work. He said no. She then said that they both knew what it was about, the Union. Piel admitted to Racine that he did not have a problem with her. She asked him who had said something about her, but he refused to say.

In early December, the Union drew up a petition protesting the discharge of Roger Sauvageau. Grenier, Racine, Cesar Barrerra (a kitchen utility worker), and other employees brought the petition to work and requested to speak to Calabrese or Bair, neither of whom was available. Assistant Manager Tom Fallon came out instead. Grenier spoke on behalf of the employees, and wanted to know if the hotel planned to recall Sauvageau. Fallon said no. Grenier said that it would not stop them and would only make them fight more, and they would keep going to the Union because of their unfair treatment of Roger Sauvageau. She told Fallon to tell Calabrese they had been there. The employees then left the Hotel. Grenier then reported to work as scheduled at 4 p.m. Racine, who was not scheduled until 5 p.m., accompanied her to the garden pantry. Restaurant Melinda Merrill came up to her and asked what she was doing ther, and said she was not scheduled to work until 5 p.m. Racine said she intended to pick up the ''due back'' money owed her. Merrill told her to pick it up and leave and come back when her shif started. Prior to this incident, Racine had never been told to leave the premises before, despite the fact that she, as did others, had commonly reproted to work early and waited for her shift.

A couple of weeks later in December, Racine, who had finished her shift, wanted to wait for Kelley to finish her work. She returned to the restaurant to inform Kelley that she would be waiting for her, but Merrill stopped her and told her to leave the building. Racine then told Kelley she would wait for outside or in the security office. The night was cold and Racine asked the security guard if she could wait. He said that she could not, because ''it's like a fucking war in here.'' Racine left for the parking lot, where she saw a friend waiting in his van, which she got into. Doug Piel approached the van in his shirtsleeves, knocked on it, and asked if everything was alright. She said it was and left.

Racine recalled another specific incident occurring shortly after this in which Merrill told her to stop talking to an employee at the end of her shift, walked her all the way through the restaurant and pantry, and watched as Racine gathered her things and punched out. Merrill acted in December to limit the conversations of the waitstaff by informing them that they could no longer fold napkins in groups of more than two. She testified that if employees were standing in back of the restaurant having a talk session with the pretense of folding napkins, when there was more important side work to be done, then she would have them do other things.

Grenier experienced a serious problem with an antiunion banquet server Steve Barone. Towards the end of December, Grenier was speaking to employee Munier Odeh in the kitchen about his conversation with Bair. Barone yelled at Grenier, ''Don't listen to that bitch.'' He returned and yelled

again, ''Don't listen to that bitch, she doesn't know what she's talking about. Don't listen to her.'' Grenier ignored him.

The night before the election the problem repeated, but in a more virulent manner. Grenier was in the kitchen preparing some salads, and speaking to Munir. Barone started yelling who the hell was she to talk to Munir about the Union, and that Grenier did not know what she was talking about. He told her that she was ''nothing but a union bitch,'' and that he was going to ''kick her ass'' outside the cafe that night. He followed her around the kitchen repeatedly yelling ''union bitch'' at Grenier. She asked him to leave her alone, but he continued his attack until she left the kitchen.

She saw the night manager, Doug Piel, in the restaurant and told him what had happened to her. Piel said he would take care of it and left the restaurant. He returned about a half hour later and told her that he had taken care of the problem, and not to worry about Barone, that he would not bother her any more. Grenier asked what he did, and did Barone get into trouble. Piel would not answer her question, and just said not to worry, that he had taken care of it. Not only was Barone not disciplined for this incident, but was chosen by the Hotel to be its observer at the election the following day.

It is against this background that General Counsel contends that restaruant hours were cut, restaurant employees were laid off, and restaurant policies were changed as part of an attempt to discourage union support. On the other hand, as noted in the overview section of this decision, due to a general decline in business and occupancy rates, the Hotel contends that it was forced to curtail its operations in an effort to remain profitable. The closing of the Rose Room in September 1989 and the Sunday brunch in late November 1989 resulted in the elimination of a number of shifts for the P.M. restaurant server.[17] Approximately 10–12 shifts were needed to cover the Rose Room during a given week. The Sunday brunch required approximately 8–12 shifts involving both A.M. and P.M. restaurant servers. Despite the elimination of these shifts, no employees were immediately laid off. Rather, in late November and early December, the Hotel attempted to distribute the remaining P.M. shifts among all the P.M. restaurant servers. Accordingly, by the end of November, most, if not all, of the P.M. restaurant servers had suffered a reduction in their weekly hours.

This resulted in complaints from servers. The full-time P.M. restaurant servers wee complaining because they were no longer receiving the four weekly shifts associated with full-time positions. In an initial effort to try and give everyone some hours, the managers often scheduled more employees than were actually needed. Consequently, employees scheduled to work were called and told not to report to work, further upsetting employees. By the second or third week in December it was apparent that the Hotel had many more P.M. restaurant servers than it needed so some employees were let go.

The Hotel's decision as to who would be let go was based on a variety of factors. The Hotel chose to terminate those employees with the poorest performance record. In addition, it chose to lay off those part-time employees who had significant restrictions on the nights which they could work, to allow flexibility in scheduling. The more full-time employees who are working in the Hotel, the easier it is to complete a weekly schedule since there are fewer individuals to juggle into the schedule. In contrast, part-time employees with restrictive schedules make scheduling more difficult. Another reason for the preference for full-time people was consistency of service.

Pursuant to this criterion, the Hotel decided in late December 1989 to discharge one P.M. restaurant server and three A.M. restaurant servers: Tammara Craig (P.M.); July Irwin (A.M.); Sandra Leo (A.M.); and Monica DeMagistris (A.M.). In addition, the Hotel laid off four part-time P.M. restaurant serves, Patricia Monytko, Edward Apicella, Mark Sanderson, and Gina Clay. Even with the elimination of these restaurant servers, however, many of the P.M. restaurant servers continued to work less hours than they had in October 1989 as a result of the continued decline in business as compared to the same months for prior years.

Discussed below are the specific allegations regarding layoffs, reduced hours and changed policies. Although I have heretofore found that Respondent committed certain unfair labor practices and clearly harbored union animus, I believe its economic defense to these allegations is legitimate and will not find that it violated the Act with respect to its actions regarding its restaurant in November and December 1989. My reasons for dismissing each separate allegation will be given with respect to the particular allegation. However, as an overall observation, I do not see what Respondent had to gain from the standpoint of reducing union support by reducing the hours and laying off certain of its restaurant employees. Known union supporters were laid off and had their hours reduced. However, so did employees whose sentiments were not shown to be known to management. Respondent's action in this regard upset and angered its employees, and would seem to have the ultimate effect of making the Union seem more attractive as an agent to aid in protecting their jobs.

g. *Loss of hours of Barbara Racine and Laurie Grenier*

The complaint alleges that both Racine and Grenier, P.M. restaurant servers and acknowleged activists in the campaign, experienced loss of hours beginning in late November 1989.[18] In this section of this decision, inquiry will be limited to pre-election activity. Alleged loss of hours and termination of these two employees in the postelection period will be discussed later. Both employees complained to management about their loss of hours in December and were each told that business was slow.

Respondent offered as its Exhibit 14 an analysis of the payroll records in evidence as General Counsel's Exhibit 165, which indicates to me that the two were not discriminated against during the preelection period from the standpoint of loss of hours when compared with all P.M. restaurant servers. This analysis reflects with respect to Grenier

[17] Except when needed for banquets, the Rose Room is still not used by the Hotel. Similarly, the Hotel does not serve a Sunday brunch.

[18] Again, Respondent points out that the last amendment to the complaint uses 1990 instead of 1989, as was set out in the complaint before amendment. Again, I view this as a ministerial error which in no way misled Respondent who fully responded to the allegations, and will not dismiss them out of hand as requested.

for the weekly payroll posting periods ending October 4, 1989–November 22, 1989, Grenier worked from 17.50 to 25.40 hours per week. The exhibit also reveals that for the payroll posting period of November 29, 1989, which would include the alleged beginning of her denial of work, she worked 24.90 hours. For the next 3 weeks, she worked 22.20, 29.00, and 25.20 hours, respectively. December 27 was the only week during 1989 when her hours were significantly lower (13.60 hours). Even working 13.60 hours, she had the second highest number of hours among the P.M. restaurant servers for the week. The total number of hours for the entire department that week was only 99.30, a substantial reduction from the 135.70 hours worked by the P.M. servers the prior week.

Grenier was ranked first in total number of hours for four of the weeks and second for the last week of the period Novermber 29–December 27 among all P.M. restaurant servers. For the five payroll posting periods in January 1990, Grenier ranked second, first (tied), fourth, first and first, respectively.

Respondent's Exhibit 14 demonstrates that for the payroll posting periods October 4, 1989–November 22, 1989, Racine worked from a low of 16.70 hours a week (October 11, 1989) to a high of 24 hours a week (October 25, 1989). For the payroll posting periods from November 29, 1989–December 27, 1989, Racine worked 24.60 hours, 17.20 hours, 24.40 hours, 18.60 hours, and 12.10 hours, respectively. Racine was either second or third in number of hours worked for the department for this period. For the five January 1990 posting periods, she worked 11.20 hours, 15.40 hours, 15.30 hours, 12.20 hours, and 17.40 hours, respectively. For the five payroll periods in January 1990, Racine worked 71.5 hours. The other P.M. servers shown to have worked that month and the number of hours they worked are: Grenier (91.2 hours), Pultinas (81.1 hours), Sidorick (69.4 hours), Wilroy (66.2 hours), Kelley (77 hours), and Vaughn (28.2 hours). Excluding Vaughn who appears to have been working only part of the period, Racine got approximately 16 percent of the hours available to all P.M. servers in January. The only P.M. server shown to have received significantly more hours during this period was Racine's fellow union activist, Grenier.

I believe the hours worked by Grenier and Racine during the involved preelection period do not reflect any discrimination toward them in terms of number of hours they were scheduled during the period. Respondent has also analysed the A.M. server hours for the period November 29, 1989–January 31, 1990, and the analysis reveals that the union organizing committee members on that shift received the bulk of the hours available.

Although it is not alleged as a violation of the Act, both Grenier and Racine testified that in or about January 1990 they experienced being called shortly before their shifts were to begin and told they would not be needed. Grenier complained to Manager Lisa Brodeur about this after one such incident. She told Brodeur that it was ''a bunch of crap'' to call her right before the scheduled shift and tell her not to come in. She told Brodeur ''that's why we want a union, because of the way you people treat us and just do whatever you want to do to us.'' Brodeur responded, ''Face it, Laurie, there's never going to be a union in here. And, if there was, nothing is going to change, so accept it.''

One occasion when Racine was called shortly before her shift and told not to report was on an evening when Calabrese was to give an employee speech. She went to the meeting anyway and when arrived at the Hotel, she discovered that Merrill was waiting on tables herself. Racine complained about this to Calabrese and Bair. Bair testified that he implemented a new policy to prevent such a thing from recurring. General Counsel contends that this policy was not communicated to the employees; however, based on the evidence in this record, there does not seem to have been a reoccurence of the short notice cancellations.

h. *Loss of hours and layoff of Gina Clay and Mark Sanderson*

Although I believe that it has been shown that Grenier and Racine were not discriminated against in terms of lost hours before the election, the matter of the treatment of part-time P.M. servers Gina Clay and Mark Sanderson is less clearcut. Clay was a P.M. restaurant server and a member of the union organizing committee. She was the most senior of the P.M. staff, having been hired by the Hotel in October 1987 as a full-time P.M. server to work in the Rose Room. She also occasionally worked the Sunday brunch prior to its elimination. In September 1989 she reqested that her status be changed from full-time to part-time because she had enrolled as a full-time student. She was unavailable to work on 2 nights during the week when she regularly had classes. Pursuant to her request, Clay was reduced to three shifts per week. Subsequently, she was reduced to one or two shifts per week until she was finally laid off by the Hotel on December 23, 1989.

On November 5, 1989, Clay spoke to her manager, Merrill, about the upcoming holidays. Merrill had posted a notice which stated that holiday assignments would be done on the basis of seniority. Clay informed Merrill of her choices and asked if it would be a problem as she had the most seniority. Merrill indicated it would not be a problem. Merrill then took the opportunity to give Clay a performance evaluation and noted to Clay that she talked too much. Clay testified that the remarks section of the evaluation was not filled in at this time, but was filled in without her knowledge at a later date. No explanation for this action was offered by Respondent.

Clay then asked Manager Merrill why her days had gone from three to two. Merrill said she was trying to give full-time employees their hours first, and things would be slow until March 1990. Clay complained that she had the most seniority, and why was another part-time employee with less seniority keeping her 3 days. Merrill responded that the particular waitress was thinking about becoming a full-time waitress.

Clay's hours went to one shift in late November, and was taken off the schedule in early December. She spoke with Restaurant Manager Lisa Brodeur about being taken off schedule and was again told that full-timers had to get their hours first, and that things would be slow until March. Clay thereafter worked only on December 15 and 16, filling in for other servers. She received an unemployment notice in January 1990, informing her she was unemployed for lack of work. In her file is also a termination review dated December 23, 1989, which is less positive than the performance evaluation she received in November. However the same

negative traits perceived by Merrill in Clay appear in both. The termination review indicates that Clay was ''permanently laid off—position eliminated closing of Rose Room.'' General Counsel points out that she had been working in the Garden Cafe for some time before the Rose Room closed.

Mark Sanderson, another union committee member, was taken off schedule in late November. He started working in August 1988 and was one of the most senior members of the P.M. waitstaff at the time of his layoff. He had been full-time, but had asked Merrill that he go to two shifts in November 1989 because of upcoming exams. Merrill told him that would not be a problem. The week after Thanksgiving, however, he found that he had been taken off the schedule completely. He spoke to Merrill in the restaurant and asked her why he had been taken off. She said he was not available enough days to be put on the schedule. He told her that he was willing to change back to his old schedule, which included every day but Thursday, when he had a night class. Merrill said she would do her best to put him back on schedule now that he was available for more hours.

He, in fact, was scheduled to work on December 8. P.M. server Grace Kelley called him and asked him to switch December 6 with her because it was her son's birthday. He agreed. Sanderson had not informed Manager Boulanger on November 27 that he had switched days with Kelley. Boulanger called Sanderson and told him that he was no longer needed on December 8. Boulanger called Kelley on December 5 and asked her to work on Friday, December 8. Kelley then informed Manager Boulanger that she had already switched with Sanderson, and was already going to work on December 8. Kelley called Sanderson and informed him that Boulanger had called her about working on December 8 and that she told Boulanger that Sanderson and her had already switched days.

On December 6, Merrill called Sanderson and informed him he was not needed for either December 6 or 8. Sanderson went to the Hotel on December 8 and confronted Boulanger at the front desk. He told her that he was desperate for work, and would be willing to work any hours after school. He told her he did not think it was fair that employees who were hired after him would be put on schedule if he was not.

Both Sanderson and Clay worked on December 15, despite not being scheduled. At an earlier union meeting, Racine and Grenier had spoken with Clay and Sanderson about possibly giving them shifts to work since they were taken off schedule. Racine gave her Friday shift to Sanderson. Clay called Kelley, who also agreed to let her work her Friday shift as well. When Clay reported to work on Friday, December 16, Manager Lisa Brodeur came to her and said that nobody had told her that Clay was coming in. Clay said she thought Kelley was going to call her, and suggested taht she call Kelley. Brodeur left without saying more.

Kelley had not called in. Racine had called in shortly before the start of the shift and informed management that Sanderson was covering her shift. No supervisor said anything to Sanderson about working that day. On the following day, December 16, Clay again worked, taking the shift of another P.M. server, Judy Sidorick. Sidorick called in in advance and informed management that Clay was taking her shift, which Clay did, without incident.

Sanderson never worked for the Hotel again after December 15. He went to the Hotel in mid-January 1990, to pick up his unemployment notice which gave ''lack of work'' as the reason for unemployment. Respondent placed an employee termination review dated December 23 in his personnel file which as reason for permanent layoff states: ''Permanent—position eliminated closing of Rose Room.'' General Counsel characterizes the review as negative; however, it rates Sanderson as ''good'' except for dependability. It comments that Sanderson ''limited his availibility to work, but expected hours. He tended to goof off and speak excessively with co-workers. He was very demanding as to why management acted as it did.''

General Counsel contends that Clay and Sanderson were permanently laid off because of their membership in the union organizing committee. In support of this contention, he cites the fact that the two servers had more seniority than some part-time servers not laid off as well as Respondent's general antiunion attitude. I do not believe the evidence is sufficient to establish that these employees' layoffs were discriminatorily motivated. First two other part-time employees were laid off at the same time and four others were terminated, employees who were not on the committee. Second, neither Clay nor Sanderson was shown to be a union activist other than being on the committee. Each only secured one other employee's signature on an authorization card. Far more visible union supporters such as Grenier and Racine were not laid off and as I have found above, not cut back in their hours in a discriminatory manner. On brief General Counsel points to the adverse reaction of Manager Lisa Brodeur when Clay reported for work unannounced on December 15. However, on the same night, Sanderson, whose role as a replacement had been relayed to management prior to his arrival, worked without incident. Similarly, Clay worked the next day without incident, her fill-in status have been noted to management prior to her arrival. Given the scheduling difficulties the Hotel experienced in December in trying to cut back hours, I do not find that a desire by management to have control over scheduling to be unusual.

The Hotel was suffering an economic downturn and had closed one of its restaurants and eliminated a brunch which reduced the need for servers. The complaint does not allege these activities violated the Act, thus acknowledging at least in part the Respondent's economic argument. It has rationally made the case that it desired to keep full-time employees but experienced complaints from them when it cut their hours because of lessening demand for their services. Thus it logically decided to eliminate some part-time positions. It picked those to be laid off based on flexibility in scheduling and job performance. Based on those criteria, Clay and Sanderson were likely candidates for layoff as both had restricted availability because of their status a students, and likely would continue to have restricted availability because of that status. In conclusion, I do not believe that General Counsel has made a case that Clay and Sanderson were unlawfully discriminated against, and the Respondent has offered logical and rational business reasons for its actions.

i. *The change in policy concerning replacements and the warning given to Grace Kelley*

Following the December 15, 1989 incident where Clay and Sanderson showed up for work without being scheduled,

Managers Merrill and Brodeur discussed the matter and decided that is was not acceptable. Merrill told Brodeur to tell Bair about the matter. On Saturday, December 16, after consulting Bair, Merrill prepared and posted a memo that reads:

> Effective 12/16/89. If you cannot work your assigned shift for any reason, you must contact a restaurant manager a minimum two (2) hours prior to your shift. The manager will find a replacement in order to insure fair division of shifts. Under no circumstances shall an employee cover his/her own shift. Any deviance from this policy will result in proper disciplinary action!

On the following Monday, a revised version of this policy was issued by Bair and posted. Merrill testified that before the issuance of the above-cited memorandum, restaurant servers were supposed to call their manager if they could not work their assigned shift. It is part of the Hotel's policy manual. She further testified that it had been the policy of the Hotel to write up employees who did not call in. Respondent did prove it disciplined employees who did not call in and missed work. However, its policy in the restaurant as of April 1989, under a different manager than Merrill, was apparently that an employee who could not make his/her shift was responsible for finding a replacement. Thus, it appears that the memorandum changed the existing restaurant policy in two respects. It shifted the burden of finding a replacement for a worker who call in from the worker to a manager, and it required call-ins to be made at least 2 hours prior to the beginning of the shift.

Grace Kelley, the server who did not call in on December 15 and who Gina Clay replaced on that date received a warning on December 20, which refers to December 15 and states: ''Grace did not speak with management before missing a scheduled shift.'' Kelley testified that Manager Brodeur gave her the warning for not telling management that she was changing her schedule with Gina Clay.

I do not find that management violated the Act by giving Kelley this warning. The warning was given for not calling in and was not given for finding her own replacement. Barbara Racine was not given a warning for finding Sanderson to replace her on December 15 and Judy Sidorick was not given a warning for having Gina Clay replace her on December 16. Both Racine and Sidorick called in as the Hotel rules mandated. Contrary to General Counsel's contentions, I cannot find that it was the existing policy in the restaurant for employees who were going to be absent to simply find a replacement and not announce they were intending to be absent. As the Hotel demonstrated that it had routinely given warnings for failure call in in advance of an absence, I find that Kelley's warning was not discriminatory and was not based on the policy change of December 16. The policy change itself does not seem discriminatory as it states on its face that its purpose is to ensure shifts are fairly distributed among employees, an important goal when layoffs and cutback hours are being imposed. The 2-hour requirement also seems reasonable as management is taking on the burden of finding replacements and would be expected to need ample time to do so.

j. *Loss of hours and layoff of Mark Scott*

Mark Scott was a room service waiter. He first began working for the Hotel in November 1987 as a busser. He went to room service in the summer of 1988. He used to work 3–4 shifts per week, but in the summer of 1989, he requested, and was allowed, to go to twice a week. He was injured while on vacation in August 1989, and notified Manager Linda Boulanger that he would be out for several weeks. He testified that she told him to call when he was ready. He testified that when he did call her back, 3 to 4 weeks later, she said she had been wondering what had happened to him. She told him to call Brad Larson, the manager. He called Larson and told him he was ready to go back on schedule. Larson said it would take a while to fit him into the schedule. When he finally went back to work on October 18, 1989, he worked 2–3 shifts per week on his old schedule.

After returning to work, Scott joined the union organizing committee, and started attending the weekly meetings. He was the only room service employee on the organizing committee. In early December, Scott's schedule was reduced to on shift. He questioned Merrill about this change and she told him it was because business was slow, and he should talk to the other manager because she did not make his schedule. The following week, he was taken of the schedule completely. He again spoke to Merrill who said he would be receiving a pink slip indicating he was laid off. The records show that Scott last worked during the payroll period ending December 24, 1989.

After Scott received his pink slip, he called Linda Boulanger and asked why he was laid off. She told him it was because of lack of work. Scott said that he had more seniority than any room service waiter besides one named Ken, who only worked once a week. Boulanger replied that he did not have seniority because he had been terminated in August and was newly hired in October. Scott said this was ''bullshit'' because he had not been told he was terminated in August and had not filled out a new application form when he returned to work. He inquired if his layoff had to do with the Union and Bolanger said, ''Why would it have to do with that.'' Scott said they would win the election and she replied the Hotel would still run with or without the Union.

General Counsel contends Scott was laid off because he was on the Union's organizing committee. The Respondent contends that Scott's layoff was made necessary by a drop in room occupancy from October 1989 to January 1990, and in fact the Hotel's occupancy did drop. General Counsel points out that the occupancy in December 1989 was roughly the same as in December 1988. However, there was a significant drop in October and November occupancy in 1989 compared with 1988. There is also no showing as to the room service staffing in 1988 as compared with 1989, which would make a comparison more meaningful.

Beginning with the week that Scott first appears on the payroll after his return, Respondent's records reflect the following weekly total hours for the room service department:

Week	*Hours*
10/25	193.6
11/01	179.8
11/08	182.6
11/15	164.0
11/22	167.1

11/29	108.9
12/06	144.6
12/13	146.7
12/20	113.4
12/27	102.8
1/3	106.3
1/10	124.6
1/17	124.3
1/24	123.5
1/31	118.3
2/07	106.4
2/14	113.4
2/21	110.7
2/28	128.6

I believe the hours do reflect a steady downward trend and support the Respondent's position that its need for room service personnel was declining. Scott's hours were reduced, but the other part-time waiters also showed reductions in their hours. In the first week Scott suffered a reduction in hours, all but one other part-time waiter also suffered a reduction from their previous weeks' hours, and significant reductions as well. In the second week of reductions, all but two were reduced from their prereduction levels. In the third week, three show reductions and three returned to the previous level. Scott did not work that week. In the fourth week of reductions, five showed reductions and one remained at the earlier level of hours. The fifth week was the same as the fourth. All part-time waiters suffered some overall reduction in hours for the period.

Respondent's records also reveal that at the time of Scott's rehiring, the Hotel had one full-time room service waiter and that continued throughout the period covered by the records. The full-time waiter employed in October transferred to another department in December and replaced by another person. One part-time waiter named Klimkewicz quit or was dismissed at the end of November, another named Kelly quit or was dismissed at the first of November, and another named Amodeo quit or was dismissed after the first week of January. No new waiters were hired for room service until midsummer 1990.

Bair testified that Scott and another room service waiter, Ken Lussier, were laid off in December because the Hotel had too many room service employees for the amount of demand the Hotel was experiencing. The selection process for lay off was to pick the employees with the least amount of hours, which were Lussier, who hardly worked at all, and Scott, who appears from the records to have worked significantly less hours than any of the other room service waiters. Thus the selection process for layoff is consistent with that used for restaurant waiters and waitresses. General Counsel contends that seniority would dictate that some other room service employee should have been laid off, but Respondent did not use seniority, but other stated criteria. Although the question is closer with Scott, I do not believe General Counsel has established that unlawful motivation caused Scott's reduction in hours or layoff. Respondent's not hiring new room service employees until several months later is also in its favor. That it did not recall Scott at that time is not conclusive either absent a showing that it had a practice of recalling previously laid-off employees to fill new positions.

k. *The layoff of Carrie Baril*

Carrie Baril was hired by the Hotel on August 28, 1989, as a full-time guest service agent at the front desk. In early October, she informed Petra Ortiz, then room division manager, that she was looking for a part-time job in the airline industry, and her hours would change in early November. Ortiz told her that it was no problem. Baril also told Ortiz that her schedule at the airline changed every 3 months, and when she could arrange it, she would go back to a full-time schedule. When Baril's schedule changed at the Hotel, she went to 3 to 4 days per week, 5 to 6 hours a day.

Ortiz gave Baril her 90-day evaluation on November 12, 1989. She received an excellent evaluation. In early December, Baril spoke with Ortiz, who asked her if she would be able to work 5 days a week during the weeks of Christmas and New Year's, due to the fact that she was expecting 100-percent occupancy, and the Hotel would be very busy. Baril said that would not be a problem, and that she would be able to work around her schedule at the airline for which she also worked. Baril then asked Ortiz if she would be getting one of the holidays off. Ortiz said that would not be a problem, due to the fact that there were at least four other people hired after Baril who had become part-time. Ortiz then penciled Baril's name in on the schedule, and pointed out the employees who would be working the holidays.

Baril signed a union card on November 22, 1989. She did not, however, become a member of the union organizing committee until the last week of November, and did not attend union meetings until the second week of December. She was first publicly identified as a committee member on a December 5 letter protesting Sauvageau's discharge, which she distributed at the front desk. On December 14, she participated in the Union's demand for recognition at Calabrese's office.

On December 16, Baril injured her hand while working for the airline. She called Ortiz and informed her that she would be out of work for at least 2 weeks. Ortiz said they would find a replacement for her. On December 21, Baril went to pick up her paycheck, and spoke with Ortiz. Ortiz then informed her that she was going to be laid off because of lack of work, and that she would be on call during the time she was laid off. Baril asked when she would go back to work, and Ortiz said February was the earliest. Baril asked why Ortiz had previously asked her to work all the extra hours during the holidays, but now are laying her off for lack of work. Ortiz responded that she had expected full occupancy, but looking at the computer bookings, she no longer expected that and just did not have the hours for her.[19] Baril asked if it had anything to do with her injury and Ortiz said no.

They then went to Bair's secretary's office where the secretary, Craig, asked her to sign a form saying the she could not receive her check unless she returned all her uniforms. Baril said she did not understand because if she were returning in February, and was to be on call, why turn in her uniforms. Craig said that Baril had been fired, and Ortiz argued that she had only been laid off. Accounting was called and it was decided that Baril only had to return one uniform.

[19] I seriously question this testimony as high hotel occupancy over the Christmas holiday period in a nonresort area like Waterbury, Connecticut, seems extremely unlikely.

Baril called in February to see about returning. Ortiz told her things were still slow, but they would call her. In March, after seeing ads in the paper for employment at the Hotel, but not having been called herself, Baril went to the Hotel. On arrival, she saw a new employee behind the front desk. She asked her if she were a new employee, and she said yes. Baril asked if she were part-time or full time. The woman responded that she was full time, but had been part-time during school. Baril then spoke with Jason Urban who had left to go to school in Boston in late December. She asked him what he was doing, she thought he was in college. Urban told her it was too expensive in Boston, so the Hotel hired him back to work.

Baril asked to speak to a supervisor. Melissa Marksbury spoke to her. Baril asked about the newspaper ads, and why she wasn't called. Marksbury said she did not know that Baril had been laid off, she thought she had been fired. Baril said there was a mistake, and asked to speak to Bair or Calabrese. Marksbury said no, she would speak to Bair. Baril pointed out the new person at the front desk and the return of a Tony Janetto to the front desk, when he was less senior than she, and requested Bair address this.

When Marksbury returned, she said that she had spoken to Bair who explained Janetto had retained seniority because he had transferred to another hotel owned by Calabrese. The new front desk employee was there because of an internship, and she was given part-time hours because of her schooling. Marksbury then told Baril that when she was called back, they would not work around her hours at the airline as before, and she would have to work a full 8-hour shift, three or four times a week. Baril asked if she would keep her seniority, but was told no, that she would only get credit for the 3-1/2 months she had worked.

Although in most respects, Respondent's records support its contention that cutbacks and layoffs were necessary in its operations because of a drop in business over the fall and into the winter of 1989–1990, the one relating to the front desk operation, Respondent's Exhibit 21, does not. As noted by Respondent on brief, it does reflect that total hours for the front desk personnel dropped from 285 for the week ending 11/22/89 to 159 for the week ending 12/27. However, for the 12 payroll periods preceding the Christmas–New Year's period, the average weekly total hours were 239. For the 8 payroll periods shown after the holiday period, the average total hours on a weekly basis are 210. This is a reduction, but not so significant as in other areas of the hotel. Simply reducing the hours of the full-time agent, John Irwin, who was fired in early December would account for the difference.

If one can get over the hurdle of agreeing that a layof of front desk personnel was necessary, then I agree that Baril was the logical employee to layoff. She was on a restricted schedule dictated by her primary employer, USAir, and would remain on such a schedule as she planned to make airline work her career. She was injured and unable to work for a period of time in any event. Laying off Baril was consistent with Respondent's stated desire to keep full-time employees, and those employees with the most flexible schedules. It demonstrated that each of the employees it retained or thereafter hired, all either worked full-time at all times or for some periods of time. None were shown to be restricted to part-time work. This is also consistent with what Baril was told by Marksbury in March. The newspaper ads which brought Baril back to the Hotel do not mention part-time work.

Although I consider Baril's treatment by management on her return in February to be unusually hostile, and thus questionable, I find that the act of laying her off was consistent with the lawful layoffs and reductions in hours taking place on a Hotel-wide basis in December 19, 1989, and I cannot find conclusive evidence that she was singled out for discriminatory treatment. I therefore do not find that she was unlawfully discriminated against as alleged in the consolidated complaint.

l. *Warnings given to Sigfredo Echeandia and loss of hours among the kitchen employees*

Sigfredo Echeandia, Hector Echeandia, and Cesar Berrera were three kitchen employees who were on the Union's organizing committee. Sigfredo was the most senior employee on his shift and is employed as a dishwasher. His brother Hector is a line cook. Both men gathered authorization cards, went to union meetings, and went to Calabrese's office with other union supporters to demand recognition.

The complaint alleges that Sigfredo's hours were discriminatorily cut beginning in December 1989. During the period of December 1989 through February 1990, Sigfredo worked as a full-time employee with three other full-time and one part-time employees on his shift. With the exception of one of the other full-time dishwashers, Feliciano, all of the other dishwashers were his brothers. Respondent's Exhibit 16 allows a comparison of hours worked by all of these employees to be made. Having accepted as I have Respondent's contention that business was declining in the December 1989–January 1990 period, the loss of hours by the entire shift is not discriminatory. I do not believe a comparison of Sigfredo's hours during this period vis-a-vis the other employees reflects discrimination either.

During this 2-month period, one of Sigfredo's brother worked approximately 275 hours, another worked approximately 50 hours, Feliciano worked approximately 222 hours and Sigfrdo worked approximately 240 hours.[20] For the month of November, before the cut in hours, Sigfredo's two full-time employee brothers worked about 195 hours each. Feliciano worked about 183 hours and Sigfredo worked 217 hours. If there was discrimination in the distribution of hours, the only real beneficiary would appear to be one of Sigfredo's bothers, Cecilio, who was the second most senior employee on the shift. There is no showing that for any period covered by Exhibit 16, October 1989 through February 1990, management consistently favored one shift employee over the others in distribution of hours. For any given week, the hours are often roughly the same for all, and in any given week any one of the four full-time employees might work more hours than any one of the other three. There is no given pattern of distribution of hours which reflects a noticeable change beginning in December 1989.

The contention that Hector Echeandia's hours as a line cook were discriminatorily cut beginning in December 1989 appears to have some merit. As with all cuts in hours among similarly situated employees, the Respondent contends that it

[20] Sigfredo was ill for one full scheduled shift during the period. Feliciano was on vacation for part of this period.

tried to give equal hours to all such employees or cut their hours proportionately. In the months of October and November 1989 Hector worked more hours per month that any other cook on his shift. Beginning in December, a new cook, Fitzgerald, began working more hours than Hector and another cook on the shift, Zelanin, either worked more hours than Hector or about the same number of hours, a clear departure from past practice. This pattern continued for the months of January and February 1990.[21] Respondent contends legitimately that all line cooks lost hours beginning in December because of business conditions. However, there is no cogent explanation for Hector's significant loss of hours relative to the other cooks. Respondent argues that Hector could not work Sundays or on the first shift of the day because of transportation problems. However, he apparently had the same transportation problems prior to December when he was working the lion's share of the cooks' hours. I also do not believe it can be credibly argued that Hector's hours were made equal with the other cooks or that they were cut proportionately. Accordingly, since no credible business reason has been given for Hector Echeandia's cut in hours beginning in December, I find that such a cut was unlawfully motivated as alleged in the complaint.

On or about December 22, 1989, Ron Pascoe, Sigfredo Echeandia's supervisor, wrote a warning to Echeandia for failing to call in to report his failure to appear for his shift that day. Echeandia testified that he was ill and asked his brother Martin to tell Pascoe of this fact when he got to work. He testified that he had tried to call the Hotel, but the front desk would not transfer the call to the kitchen. He did not leave a message with the front desk or the manager on duty. Martin informed Pascoe of the illness shortly after the shift started after being asked by Pascoe of Sigfredo's whereabouts. On the following day, when Pascoe gave Sigfredo the warning, he refused to sign it. Sigfredo said he had been sick and sent his brother with an excuse. Pascoe replied that he was supposed to call in himself. Sigfredo asked how he could call in when the kitchen would not accept phone calls. Pascoe told him that if he had asked for the chef his call would have gone through, to which Sigfredo replied he had not been told that previously.

Respondent followed established policy in giving this warning and it is similar to other warnings given employees before the union campaign began. The purpose behind the call-in rule is to allow the Hotel to obtain a replacement worker if necessary By not leaving a message with the Hotel when he called, Sigfredo denied the Hotel the possibility of obtaining a replacement until his shift had started. Given the fact that Respondent's rule has a legitimate purpose and Sigfredo violated the rule, I do not find the warning given him to be unlawful.

In late December, Cesar Berrera, a part-time dishwasher and union committee member, was called at home by Ron Pascoe who asked him to come to work. Barrera said no and told Pascoe that he was going to attend a union meeting. Pascoe asked him which was more important, the Union or his work. Barrera reiterated that he was going to the meeting. In the payroll period ending January 7, 1990, Barrera was taken off the schedule for 1 week. Respondent offered no specific reason for the this action in testimony, but on brief points to the declining business for that week reflected on Exhibit 16 as its reason. I just cannot accept this reference to the exhibit given the timing of the 1-week layoff. The exhibit does reflect that most of Berrera's fellow kitchen workers suffered a significant cut in hours for the week ending January 7, and the hours Berrea could have expected to work that week would have been minimal, probably only 2 or 3 hours based on the hours worked that week by coworkers. However, one employee who worked less hours than Berrera for the week ending January 3, actually had his hours tripled for the week ending January 7. I agree with General Counsel that in the absence of some specific reason for laying off Barrera for the 1-week period, the clear implication of Respondent's actions was to punish Barrera for going to a union meeting rather than filling in on an unscheduled shift as requested by Respondent. I find that Respondent violated Section 8(a)(1) and (3) of the Act in this regard.

m. *Loss of work for Bella Berdan*

In November 1989, Respondent took bedspread repair work away from Bella Berdan, the Hotel's only full-time lobby maid and a member of the Union's organizing committee. Berdan had been repairing bedspreads at home for the previous 2 or 3 years at the request of Tavares. She testified that she was told by Candy Cimino, an inspectress, that she would no longer be given bedspreads to repair. Inspectress Sarah Frankenfield testified that Tavares gave the work to her and the other inspectresses because business was slow and they did not have enough to do to keep them occupied during their shifts. Tavares testified similarly. I find Frankenfield's testimony in this regard to be credible and it establishes a legitimate reason for transferring the repair work from Berdan to the inspectresses. Consequently, I will dismiss this complaint allegation.

The complaint also alleges that Berdan lost hours beginning in December 1990 and continuing to date because of her union activities. As noted earlier, hours were being cut in all departments of the Hotel. Reference to Respondent's Exhibit 8 reflects that no cuts in Berdan's hours occurred until the pay period ending December 27. Every maid on the staff suffered a reduction in hours in that pay period. The loss in hours for all maids continued into and through January, and Berdan's public area partner, Angiollio, did not work at all during the pay periods ending January 24 through February 14. Reference to Respondent's Exhibit 18 and the underlying General Counsel's Exhibit 165 reflects that Berdan was not singled out for any disparate treatment in the reduction of hours among all maids during the January–February 1990 period. For example, the night maids as a group averaged 53.8 weekly hours in December, but dropped to 7.6 hours weekly in January and to 27.8 hours weekly in February. During the January–February period, Berdan worked almost twice as many hours as any other maids employed by the Hotel.

On brief, General Counsel contends that during the spring and summer of 1990, Berdan experienced a significant decrease in the percentage of total hours worked among the

[21] Fitzgerald started work in late November 1989. He evidently replaced another cook. In November, Zelanin worked about 175 hours and Hector worked about 225 hours. In December, Fitzgerald's hours were 166, Zelanin's were 150 and Hector's were 151. In January, Fitzgerald's hours were 152, Zelanin's hours were 157 and Hector's hours were 129. In February, Fitzgerald's hours were 143, Zelanin's hours were 138 and Hector's hours were 134.

public area maids when Respondent hired a third such maid in May 1990. The new maid left in August and was not replaced. Berdan's average weekly hours for the months March 1990 through September 1990 are as follows: March, 32.6; April, 34.6; May, 32.6; June, 30.3; July, 28.7; August, 28.0; and September, 35.4. Although Berdan's share of the total hours available for maids decreased during the time of the third maid's employment, her average hours per week did not significantly drop. Berdan missed 2 weeks of work in June and 1 week in August. General Counsel argues that no attempt was made by Respondent to explain why a third maid was hired in May 1990. A very plausible reason is that the matter never came up at the hearing and Berdan did not herself complain about the loss of hours in June and July. As Berdan evidently did not feel aggrieved by this matter, and as I do not find she was discriminated against in the matters actually raised at the hearing, I will recommend dismissal of the complaint allegations regarding Berdan.

n. *Loss of hours in the sports complex*

In the beginning of January 1989, Kimberly Goffredo, a part-time sports complex employee and committee member, had a conversation with Fallon in the sports complex during which Fallon informed her that the shift was being eliminated because business was slow. Goffredo told Fallon that the action was being taken because of her work with the Union. Fallon denied the allegation.

Later that day, Fallon again approached Kimberly Goffredo in the sports complex. Present at the time was Jennifer Goffredo, Kimberly's sister and a part-time sports complex employee. Fallon told the sisters that they had a decision to make about what hours each wanted to work in light of the elimination of the 1 to 5 p.m. shift. In response, Kimberly asked Fallon whether her shift was being eliminated because of her work with the Union. Fallon replied that Respondent's decision had nothing to do with it.

As a result of the elimination of the shift, Kimberly Goffredo began working 3 days during the week from 5 to 10 p.m. and Jennifer Goffredo began working 2 days during the week and on the weekends. In addition to the sports complex manager, Baltrush, there was one other part-time attendant employed at the time the afternoon shift was eliminated. This attendant worked in the evening. No other shift was eliminated. Baltrush lost 1 hour per day of work as a result of the shift elimination.

It is contended by General Counsel that Respondent eliminated the shift to get rid of Kimberly Goffredo because of her union activities. At the time of the shift elimination, the union sympathies of Jennifer Goffredo and the other part-time attendant were unknown. In defense of its actions, the Hotel points to three factors which caused the elimination. First was declining hotel occupancy, which was established in the record. Second was a declining number of nonguest memberships in the sports facility. Although this number significantly declined after November 1989, the degree of decline was apparently not known by management until after the decision to eliminate the shift was made. The third factor was Bair's belief that the afternoon shift was the least used of the three shifts. General Counsel attacks Bair's knowledge of the sports complex on brief; however, it appeared to me that Bair had an indepth knowledge about every facet of the Hotel's operation.

If the Hotel desired to rid itself of Kimberly Goffredo, it certainly did not go about it in a direct manner. It offered her hours on all other shifts and asked the other attendants to share hours with her. She was precluded from working weekday mornings because she was a student at an area college. She managed to work only about 6 hours less in January than she had in December before the shift elimination. As far as the record is concerned, the shift remains eliminated as of this date, though Kimberly Goffredo quit her employment in March 1990. There is no contention that Goffredo was constructively discharged.

General Counsel contends that the Goffredo's were the only employees of the sports complex to have their hours affected by the shift elimination. I disagree. Reference to General Counsel's Exhibit 195 reflects that three part-time attendants shared hours as their respective hours varied widely from week to week. He also contends that the Hotel hired four new attendants from December to February. This is misleading. The Hotel had three part-time attendants when the shift was eliminated. It never had more than three attendants during any week after January, and replaced Kimberly Goffredo when she quit. Jennifer Goffredo did not testify and her feelings about the situation are unknown.

I believe that Respondent's business reason for the elimination of the shift, the fact that Kimberly Goffredo was not laid off, the continued elimination of the shift, and the fact that Goffredo was replaced when she quit taken together satisfies Respondent's burden of proof under *Wright Line*, supra, and find that its action in this regard was not unlawful.

o. *Reassignment of duties and schedules in the housekeeping department*

(1) Changes in schedules

The complaint alleges that in November 1989 certain employees were taken off the schedule on Wednesdays. This is alleged to be unlawful because union meetings were switched in November from Thursdays to Tuesdays and thus those union committee members attending a Tuesday night meeting would be unable to attend work the next day and carry out plans made the night before. For the reasons set forth below, I do not believe this action by the Hotel rises to the level of an unfair labor practice.

General Counsel asserts on brief that three housekeeping employees were rescheduled durinig the campaign so that Wednesday became their day off. He lists these employees as Eleanora Williams, Victor Little, and Bella Berdan. First, I do not believe that Berdan was actually rescheduled. The only testimony to this effect is from Little. Berdan testified and not only did not mention that she had been rescheduled, did testify that she had authorization cards signed at work by fellow employees on a Wednesday in late November. On the other hand, Eliza Svehlak did testify that her days were changed at some point in the campaign.

Before looking at the testimony surrounding this allegation, I would point out that there seems little purpose for management to reschedule only three members of the organizing committee which was composed of approximately 25 employees, including three other housekeeping employees. At the time of the campaign the Hotel had approximately 40 employees in the housekeeping department.

Eleanora Williams, a housekeeping employee, testified that prior to November 1989, she worked 7 days a week. In November, her days were cut back to 5, and one of the days cut from her schedule was Wednesday. This continued until some time after the election. She was unaware of any other employee who had their schedules changed to make Wednesday their day off.

Victor Little, another housekeeping employee, testified that prior to the campaign, his regular days off were Tuesdays and Sundays. In late November, his Tuesday off was changed to Wednesday. As he liked having Wednesday off better than Tuesday, he accepted the change without asking anyone why it was made.

Eliza Svehlak testified that during the campaign her schedule was changed to have Wednesday as a set day off whereas before the day off changed from week to week. This situation remained the same until after the election when she returned to a changing day off.

Supervisor Kathy Tavares testified that she was unaware of the day of the week of the union meetings until some time in December, after the scheduling changes complained of had been made. As Respondent has in its records timecards for these employees which would reflect their day off and did not produce them, I assume that they did have their schedules changed as they testified, including Svehlak and Williams having their schedules changed back after the election.

The timing of the changes, as well as the return to previous scheduling of two of the employees affected after the election, certainly points to some sort of discriminatory motivation. On the other hand, by only rescheduling 3 of some 25 committee members, Respondent accomplished nothing. The scheduling changes did not inconvenience any of the three employees and actually appealed to Little. It did not prevent attendance at union meetings, nor did it prevent the employees from engaging in union activities when they returned to work on Thursdays. Because of the extremely slight effect this activity could have had on the rights of the employees involved, I do not find that it constitutes an unfair labor practice.

(2) Elimination of training responsibilities

The consolidated complaint alleges that Respondent unlawfully denied employees training opportunities since on or about October 16, 1989. The employees involved are housekeeping employees Eleanora Williams and Victor Little.

Williams testified that she was given the responsibility for training new housekeeping employees in October 1989 and received 40 cents an hour in additional pay. She replaced employee Celinda Foote who was promoted to inspectress at the same time, but according to Williams, continued to train as well. Williams testified that she started training four or five new employees, four of whom quit almost immediately. One new employee she trained stayed. She was identified by William as Johanna. Williams testified that she had conversations about the Union with this employee who appeared interested. She further testified that she was subsequently told by an inspectress, Flo Cordon, that Johanna was telling Kathy Tavares about the conversations and warned her not to talk to Johanna about the Union again. Although no one said anything more to her, she believes her training duties were taken away at this point until after the election. Williams was not sure when her training duties stopped, but believed it was sometime in November or December 1989. She continued to receive her 40 cents per hour however. She also testified that the hotel did not hire new housekeepers for a while before the election.

In the period that she believes her training duties were suspended, she testified that Foote trained about seven or eight new female employees. She identified them as Norma Hall, Cheryl, Pat, and Elaine. She could recall no other names. Her belief that Foote was training these employees was based on her observation of Foote and these employees having lunch together. Three of these employees were hired by the Hotel in September 1989 while Foote was still the trainer. Tavares testified that the other employee, Norma Hall, was hired in November and was trained by Williams. She denied that Williams' training duties were ever suspended.

Victor Little began training new housemen approximately 6 months before the union campaign began, a period during which he trained six or seven new housemen. Little testified that after the campaign began, he trained only one new employee named Rosado. After his training was completed, Rosado was given Little's training responsibilities, although he had been employed only 2-1/2 weeks. Little testified that following the election, his training duties were restored. The payroll records in evidence reflect that Rosado was hired on October 13, 1989, and the Hotel admits Little trained him. However, the payroll records also show that no new housemen were hired from October 13 to the date of the election.

I believe that General Counsel has failed to make a prima facie case with respect to this complaint allegation. Little could not have been denied the opportunity to train new housemen as he testified because there were no new housemen hired. Of the new housekeeping employees, Williams claims she was denied the opportunity to train, three were hired and trained before her promotion to trainer. Tavares testified that Williams trained the other employee identified by Williams, Norma Hall. In this regard, I credit Tavares' testimony. Williams' memory of the alleged timing of the suspension of her training duties was very sketchy, and her memory of employees trained by Foote after this alleged suspension was just wrong. Additionally, her training bonus was never stopped and she was never told her training duties were suspended. As the late November–January period was one when the Hotel was cutting back on employees and hours, it is likely there were no new housekeepers to train. I will recommend this complaint allegation be dismissed as I do not believe it was proven.

There is also a complaint allegation that Respondent violated the Act by assigning new employees to work only on the third and fourth floors of the Hotel. Although this point is argued on brief, I can find no credible evidence to support the allegation. Accordingly, it will be dismissed.

(3) Assignment of Eliza Svehlak to clean rooms on election day

On January 25, 1990, the date of the election, Svehlak arrived at work at approximately 6:30 a.m. and began working in the laundry department at 7 a.m. Before punching in, however, Svehlak was informed by her supervisor, Kathy Tavares, that she did not have enough maids for the day and needed Svehlak to clean rooms. At approximately 8 a.m.,

Svehlak began cleaning the first of 13 rooms she had been assigned to clean.

Prior to this time, Svehlak had been called on to clean rooms approximately three to four times per year and on those occasions normally cleaned a total of nine rooms. Svehlak would be asked to clean rooms, if, for example, a housekeeper called in sick and no other housekeepers were available to cover the shift. She would often work with Tavares on such occasions.

Respondent's normal practice when a housekeeper is unable to work her shift, is to contact housekeepers who are off to find out if they are willing to work. If a housekeeper cannot be found Respondent then calls on the inspectresses to clean rooms, or Tavares cleans them herself.

Tavares testified that on election day one of her maids called in sick. Rather than call an off-duty housekeeper to fill in, she testified that ''I knew Eiza knew how to do rooms, so I had an extra fellow on, so I asked the fellow would he go downstairs and do laundry, which is just putting through the ironer, and I had her come upstairs to do the rooms.''[22] She had Svehlak clean 10 or 12 rooms and did not receive a protest from Svehlak.

I agree with General Counsel that Svehlak was assigned room duties on election day to keep her away from the bulk of other employees during the course of the election. Svehlak had cleaned rooms on occasion, although it was certainly not common experience. Tavares did not follow normal procedures by attempting to find a replacement maid by calling off-duty maids or using an inspectress. There was no sense of emergency that called for Svehlak to be taken away from her normal duties. Given Svehlak's relatively high profile as a union supporter, the timing of the incident, and the failure to follow normal procedures, I find that the assignment of Svehlak to clean rooms on election day was unlawfully motivated and violated Section 8(a)(1) and (3) of the Act.

p. *The discharge of Mary Crabb*

The consolidated complaint alleges that restaurant server Mary Crabb was unlawfully terminated on or about January 15, 1990. Crabb was a server on the morning shift in the Hotel's restaurant. Although she signed a union card in November, she did not attend a union meeting until January 9, 1990, and was not a member of the organizing commitee. She went on vacation after December 19, 1989, and did not return until January 1, 1990. Shortly before she went on vacation her supervisor, Melinda Merrill, gave her an evaluation. Merrill told her that she was a very hard worker, had very good attendance, never called in sick, and had never been late. Merrill, indicated, however, that she had an attitude problem that needed work. The evaluation indicated that she ''sometimes lets customers affect attitude,'' and that she ''gets angry and everyone knows it.'' Merrill also indicated that she needed to keep her voice down because she had a very loud voice. The evaluation indicated that in all qualities but ''attitude'' her grades ranged from satisfactory to excellent. Her attitude was judged ''fair.''

At the January 9 meeting, Crabb was given a copy of a union petition to get other employees to sign. She testified that she brought it to work the following day and solicited signatures. In this regard, she testified that she was not observed by any supervisors. On January 11, Crabb attended a meeting held by Calabrese. She testified that after the meeting, Merrill spoke to her in the pantry and asked her what she thought of the meeting. Crabb replied that there were ''some good points made, there were some bad points made.'' According to Crabb, Merrill said, ''So that means you're for the Union?'' Crabb shrugged her shoulders and walked away. Merrill denied having this conversation with Crabb and Crabb's affidavit given to the Board evidently does not mention it. Crabb also believes that Merrill overheard a conversation she had with a fellow employee about the Union. I just do not believe these conversations occurred and credit Merrill's denial.

On January 13, Crabb, though feeling ill, reported to work at about 6 a.m. and noticed that the chef was not in. Merrill arrived shortly thereafter and Crabb informed her about the chef's absence. Merrill told her she was more concerned about the buffet not being set up. About 8 a.m., Merrill told Crabb that the restaurant would be offering customers both a buffet and service from the ala carte menu. Crabb replied that she did not see the point and that there was no way that they would be making any money off it and it was more work for the wait staff. The two parted and sometime later Merrill approached Crabb and told her again that they were going to have the buffet and ala carte service. Crabb said it was just too much work. Merrill said that if she did no like it, Crabb could go home, adding that Crabb had an attitude problem. Crabb testified that she then just walked away.

A short while later in the restaurant pantry, Merrill asked her if she still had an attitude problem and Crabb pointed out that the Hotel got rid of the Sunday brunch because it was not making money. Merrill agreed. Crabb testified that she then said, ''Well, then what the hell's the point?'' Merrill replied, ''If you don't like the way things are going to be run you can just go home.'' Crabb said she might do that and concluded the conversation with, ''This is fucking ridiculous.'' Crabb then went into the kitchen, and shortly afterwards, Merrill followed her and asked if she were going to stay or go home. Crabb said she was going home. In her cross-examination, Crabb admitted being angry during this morning, and having been rude to customers and to Merrill.

Crabb testified that she cashed out and while doing that asked to see her schedule. She testified that Merrill refused, ''but I had already known when I was working. I had gone out into the Garden Cafe and got a couple of waitresses to cover my Tuesday and Wednesday shifts for me. I could not find a waitress to cover my Monday shift for me so when I came back in I told Melinda, 'You know, so and so's going to work Tuesday for me, so and so's going to work Wednesday for me, I can't find anybody to work Monday so I will see you Monday.'''

Crabb testified that she reported to work on Monday and noticed her name had been completely taken off the work schedule. She went to find Eliza Svehlak to get Union Representative Rob Traber's phone number, but Svehlak was not yet in. A little later she spoke with another waitress coming in for work who asked what she was doing there. She said she was coming to work and the other waitress just said, ''Oh.'' She then saw Svehlak and explained that she had been taken off schedule and Svehlak suggested she wait and

[22] The reader should remember that Respondent vigorously contends that Svehlak was a statutory supervisor at this time.

talk to someone about it, but Crabb left.[23] Later that day, she called the Hotel and talked with Food and Beverage Director Linda Boulanger and told her that she had not quit and wanted to know if she had been fired. Boulanger told her that Bair wanted to speak with her.

She came in on the following Thursday when Bair and Calabrese were having an employee meeting. She testified that she asked to attend, but was not allowed to do so. After the meeting, she met with Bair who told her she was terminated for using abusive language.

Merrill's version is very similar to that of Crabb up to a point. She testified that about midmorning, after having tried to avoid Crabb when possible because of her attitude that day, she was stopped by a customer who complained to her of Crabb's treatment of him and his son. He told her that Crabb had slammed plates in front of him and told him she was glad she was going home. Merrill apologized to the customer and went to find Crabb. She found her in the pantry and told her about the complaint and that her attitude was unacceptable. Merrill testified that Crabb lost her temper at this point and said:

> This fucking restaurant fucking sucked. And she thinks the buffet sucks, that she has her own fucking opinion, and that she will tell me what her fucking opinion is. And while she was pointing her finger at me at this point, and Mary is taller than I am. And I was more and more, very intimidated. She was screaming at me. She said she had her fucking opinion and that she would tell Mr. Calabrese.

Merrill told her she could tell Calabrese, but that she would have to straighten up or go home. Crabb then went to the restroom and returned in about 10 minutes. Merrill told her that she was going home and Crabb agreed. After Crabb had checked in her money, Merrill gave her a written warning for acting in an abusive manner with abusive language. Crabb signed the warning, without comment. Before she left, Crabb attempted to cover her shifts for the rest of the week, saying she could not work for the rest of the week. Merrill then escorted Crabb out of the building.

Bair and Calabrese had lunch in the restaurant that day and Merrill reported what had happened. Merrill testified that she broke down and cried while telling them about it. Later in the day, Bair called her into his office and they discussed the incident. Bair testified that he decided to terminate Crabb because she had been grossly insubordinate and abusive to a manager, both in words and action.

Although the General Counsel did demonstrate that other employees had been insubordinate to a supervisor and not fired for it, discussed more fully with the matter of Roger Sauvageau's termination, and though he demonstrated that off-color language was used in the Hotel, though not the word ''fuck,'' I do not believe Respondent violated the Act by terminating Crabb. Unlike Sauvageau, Crabb was neither engaging in protected activity nor was it shown she was known to be a union supporter by credible evidence. Having heard the testimony of both witnesses, I credit that of Merrill with respect to the incident. Crabb's problem with anger had been noted in her performance review which predated the alleged conversation with Merrill on January 11. She admits she was both angry and rude on the day of the incident and admits using abusive language toward Merrill, though not to the degree noted by Merrill. Crabb's testimony about the incident was less than candid in my opinion. She testified that she did not read the warning given her that day, though she signed it. She testified that Merrill accused her of being for the Union and that she met with Eliza Svehlak on the Monday following the incident, two incidents which are not supported by her affidavit or other testimony.

Lastly, the General Counsel points out that Crabb's employee termination review states she resigned when in fact she was terminated and has a less favorable review of Crabb's performance than her performance review of about a month earlier. The termination review was prepared on January 15, the Monday following the Saturday incident when Crabb did not report to work. At that time Respondent could easily have thought that Crabb had quit. The comment section of this report is less than complimentary as it reflects the Saturday incident.

In conclusion, I do not believe that the General Counsel established that unlawful motivation played any part in the discharge of Crabb and that Crabb's behavior with customers and Merrill on January 13 provided ample justification for her termination.

3. Employee meetings in January and Employer's postings

Respondent held a number of employee meetings during the course of the union campaign to give employees its position with respect to the Union, which was clearly against it. The Hotel has the right to express its position in this regard so long as it does not make promises or threats to the employees. There is no allegation that the bulk of what was communicated by Respondent to its employees was unlawful. Calabrese generally conducted these meetings and read from a prepared text. The prepared speeches were available as evidence but not entered into the record, evidently because the General Counsel did not find them to contain unlawful statements. However, several witnesses testified that Calabrese on occasion departed from the prepared speeches and engaged in question-and-answer debates with the assembled employees. On these occasions, it is alleged that he made statements which did violate the Act. Additionally, it is alleged that the Respondent posted various documents which are violative of the Act and used an incident where an employee felt threatened by the Union to unlawfully disparage the Union.

a. *Statements made at employee meetings*

Grace Kelley testified about a meeting she attended in January together with Barbara Racine and Laurie Grenier. She recalled that Calabrese spoke about how much money the Union would make if it was voted in, and how much the Union would cost the employees, mentioning an initiation fee. Kelley asked him a question about the Hotel's managers, mentioning that she had had a problem with one. Calabrese said that if she had problems she could see him later.

With respect to what Lauri Grenier and Barbara Racine said at this meeting, Kelley testified she could not recall much because she had her children with her and they required much of her attention. She did remember both women

[23] This meeting with Svehlak is not mentioned in Crabb's affidavit and was not mentioned by Svehlak in her testimony.

tried to speak and ask questions, prompting Calabrese to say that they were taught by the Union to interrupt him so that he would lose his train of thought, look stupid, and not know what he was saying.

At the close of the meeting, she and five or six other employees met with Calabrese and Bair at the podium. She recalls again raising the problem of managers and asked if the employees could meet with the managers to talk about problems. Calabrese said he would not put his managers through this process. She remembered nothing of what any other employee said at the podium.

She attended another meeting with coemployee Debbie Wilroy. At this meeting, Calabrese talked about hotels going on strikes when they are unionized. The transcript is garbled at this point, it reads:

> He said that all hotels on strike when they're unionized. He said that all hotels on strike and that if we went to have a union, he said we—I'm not saying that we would be negotiated, and if we didn't negotiate, we'd have a strike, and then your jobs would not be guaranteed when you came back, when the strike as over.

He also said that he could get temporary employees to take the strikers place, and your job may not be guaranteed when you come back. She asked him if he had a list of hotels that went on strike, and he said no, but there is a whole bunch. He indicated he would get her a list later.

I fully credit Kelley's testimony with respect to the meetings she attended and can find nothing in her testimony which establishes an unlawful statement by Calabrese.

Laurie Grenier attended two employee meetings addressed by Calabrese. The first was in January with Kelley and Racine. She testified that Calabrese made a speech and gave a slide presentation dealing with union fees and the closing of the Hartford Hilton. After the set presentation, Calabrese opened the meeting up for questions. Grenier testified that she stood and introduced herself as a member of the union organizing committee and told him his presentation about union initiation fees was incorrect, pointing out the correct information and arguing with his questioning how much union officials made.

She testified that someone next to her yelled that if she was not happy at the Hotel, why didn't she go to work elsewhere. She replied she worked at the Hotel out of choice and was trying to make things better at the Hotel. She testified that Calabrese chimed in saying, ''That's right you do have a choice. You have a choice. You could leave.'' Another employee stood and made a speech against the Union. Calabrese then said, ''I want everybody to just listen to what she said, that's what we should listen to, and not Ms. Grenier.'' Grenier then testified that she said how unfair this was, that ''you're talking about running a fair election. We don't have a fair election. I can't even hang a paper up that isn't taken down a half hour later. You hang yours under glass, and you think that's a fair election? You can have your person speak and tell everybody to listen to her, that's not fair. That's not a fair election. I don't think you're being fair to us.'' Having heard this testimony and that of Calabrese, I generally credit Grenier's testimony as set out above. Calabrese testified that he cut off the employee suggesting that Grenier could leave the employ of the Hotel. Having heard him testify, I find it far more credible that he supported the suggestion that she leave.

Calabrese said that she had his permission to hang papers wherever she was hanging them at the time.

She also recalled saying to Calabrese and the assembled employees that all the employees wanted was to be fair, to have a place to work that was nice and good. ''We just want to get to a point where we can negotiate with you, to sit down.'' Calabrese replied, ''I'll never negotiate with the Union.'' Grenier then said, ''But Mr. Calabrese, if it's voted in you have no choice but to negotiate.'' Calabrese said, ''I can prove that this hotel doesn't make any money, and I don't have to give you anything.'' I do not credit this testimony. No other witness to the meeting remembered anything like this happening. This statement by Calabrese would have had a shocking effect if uttered in the meeting, and yet only Grenier testified that she remembered it. I find her memory faulty in this regard.

Grenier remembered Grace Kelley saying that she went out of her way to get somebody to replace her when she was sick and got in trouble for it. ''And you don't care, Mr. Calabrese, that I got somebody to replace me, all you cared about was who I got to replace me, that's not fair.''

Although she remembered Racine speaking, she did not remember what she said. She went to the podium at the end of the meeting and her testimony indicated she asked the same question about managers as Grace Kelley indicated she had asked. She recalled Kelley, Racine, Svehlak, and Munier Odeh, a dishwasher, were also present. Grenier could not recall what Kelley or Racine said at the podium. Grenier said she looked at Munier Odeh, and asked if he wanted a Union. He said yes, and Calabrese said, ''I won't let a union in this hotel. I'll sell the hotel before I let a union in here.'' This statement is not in Grenier's affidavit given to the Board about this meeting. I do not credit this alleged threat by Calabrese, which is also mentioned in the testimony of Racine. It was denied by Calabrese and Bair, and was not confirmed by Svehlak or Kelley, both of whom were at the podium and testified. Again, a statement this shocking would not go unremembered if uttered.

Grenier recalled nothing else about the meeting. After the meeting, she posted a paper saying there was no union initiation fee, what the dues were, and everything else in the meeting. She testified this was taken down almost immediately by a member of Respondent's management, Doug Piel. She told him that Calabrese had given permission and he left. He returned shortly, apologized to her and reposted the paper.

She attended another meeting shortly before the election. She testified that Calabrese, opened the meeting saying he had intended to make a speech but tragic events caused him to change everything. She testified that he said the tragic event was the fact that an employee was threatened by the Union that his house would be ''firebombed'' for not signing an authorization card.[24] He continued to state that in re-

[24] Calabrese denied vigorously using the word ''firebomb'' in his presentation. I credit his denial. Reference to the text from which he was reading shows a word blacked out where this word would have been used. Counting the spaces contained in the blacked out portion indicates a 10-letter word was used. I believe the word used was ''threatened'' as it is a 10-letter word and is consistent with the rest

sponse he had hired police to patrol the outside and inside of the Hotel for the employees' protection against the Union. He shut the meeting down at this point and would take no questions. This meeting and the Respondent's actions regarding the alleged threat will be discussed separately.

Barbara Racine testified about the January meeting she attended with Grenier and Kelley. She remembered the presentation about initiation fees and union salaries and Grenier challenging those statements. She testified that Grenier said that some things at the hotel should be changed, to which Calabrese replied that if she was not happy at the Hotel, she could leave.

Racine testified that she spoke at the meeting, identifying herself as an organizing committee member. She said there were problems at the Hotel and the employees needed a voice. She testified that Calabrese interrupted her and said that the Hotel gives her the opportunity to work there and she should be happy with that. Another employee spoke up against the Union and Calabrese did not interrupt this person.

Racine went to the podium after the meeting and remembers Eliza Svehlak speaking to Calabrese, and then getting upset and crying. Laurie Grenier was saying ''come on, come on, it's not worth it.'' Grenier then said that they wanted Roger (Sauvageau) to come back to work, and Calabrese said that Roger will never work at the Hotel again. She testified that Grace Kelley then brought up the manager problem and requested that the employees meet with the managers. Calabrese said he would never put his managers through that. Racine testified that she then said that is why the employees need a union, because when you come to Calabrese with a problem, the answer is no right away. She stated that Calabrese then said there would ''not be a union in this Hotel,'' it's my Hotel, that he would sell the Hotel first. This is all she remembers about the meeting. As noted with the testimony of Grenier, I do not credit the assertion that Calabrese threatened to sell the Hotel if the Union was voted in.

At another meeting, the matter of Roger Sauvageau was brought up and Calabrese said he was right in firing him. Racine said that if he was right, why was Sauvageau awarded unemployment compensation. She testified that Calabrese flew off the handle and ran over to her, going on and on about how he was right. Bair came over and quieted Calabrese.

Eliza Svehlak testified about the meeting that Grenier, Kelley, and Racine attended together, but did not mention any of the critical things they testified happened.

In all the testimony discussed above, the matter of the Union's alleged threat to an employee aside, I find only the seconding of the antiunion suggestion made by Calabrese to Grenier that she could leave the employ of the Hotel if she were not happy to be in violation of Section 8(a)(1) of the Act. At best, the comment leaves the impression that union supporters are not welcome at the Hotel and appears to me to be an implied threat that union support could result in retaliation, including loss of employment. *Grove Truck & Trailer*, 281 NLRB 1194, 1195 (1986).

of the text, which used some form of the word ''threat'' again and again.

b. *The alleged union threat and Respondent's response*

As noted above, Respondent just before the election accused the Union at an employee meeting of threatening the person and property of employees and engaged police to patrol the Hotel as ''protection'' from the Union of the employees and their property. I seriously agree with the General Counsel that this was done not in a reasonable response to the underlying incident, but as a calculated tactic to undermine support for the Union. In discussing this matter, I will set out only the testimony most in support of Respondent's position, as this would have been the evidence on which it relied. Traber gave his version of the incident, but it would not have been known to the Hotel at the time it acted.

Louise Theriault and her husband, Ernest, are both employees of the Hotel. In January 1990, their home was visited by Union Representative Rob Traber.[25] L. Theriault testified that Traber arrived at their home with her mother-in-law, whom Traber had picked up. Traber had previously asked to talk with the Theriaults in a phone conversation but had been informed that it would be useless as they did not want to sign authorization cards. On the day in question, however, Traber was allowed into their home.

L. Theriault testified that Traber said they had a nice home, nice car, nice grandchildren, and a comfortable way of life. As he talked, he asked on several occasions that they sign an authorization card. The Theriaullts continued refusing to sign. After about 2 hours, L. Theriault told him there was no point in him staying longer because they were not going to sign. She said that Traber then said, ''Well, you wouldn't want anything to happen to your grandchildren,'' referring to their picture and mentioning again their comfortable lifestyle. She testified this gave her fear and she was afraid to go to work the next day.

She mentioned this incident to other employees at the Hotel, wondering if they had also been visited by Traber. She was subsequently summoned to Calabrese's office where he asked her what happened and if she would feel better if there was police protection at the Hotel when she came to work. She indicated to Calabrese she was thinking of taking time off out of fear. Calabrese then called the police and a detective arrived who took a statement from L. Theriault. This statement reads:

> On Saturday Jan. 20, 1990 the writer Det. O'Leary received a complaint from a Mr. Joseph Calabrese who is the owner of the Sheraton Hotel in Waterbury. Mr. Calabrese stated that his hotel is in the middle of a possible union take-over, and several of his employees have complained to him that they are being threatened and harassed by associates of the Restaurant and Hotel Local 217 which is based out of New Haven.
>
> Mr. Calabrese then introduced me to a Louise Theriault who lives at [address omitted], with her husband Ernest. Both Louise and Ernest work at the Sheraton. Ms. Theriault stated that on Friday Jan. 19, 1990 she was at home and at approx. 3:00 pm Ernest came home from work and pulling into the driveway right be-

[25] As was the case with Sauvageau, I feel it necessary to comment on the appearance of Traber. He is a slight person with a friendly demeanor and I find it difficult to believe he could be physically or otherwise intimidating.

> hind Ernest was a Rob Traber who is a union representative. Ms. Theriault stated that Traber came into their home and asked what their intentions were concerning the upcoming union vote. Both Louise and Ernest stated that they were not interested in the union at which time Traber stated to them they they [sic] had a nice house and car and that it would be a shame if something happened to the house and car. Traber then looked at pictures of their grandchildren which were on the wall and Traber stated they were very nice looking children. Traber then left.
>
> Mr. Calabrese then introduced me to another employee named John Rolandi who stated that he received an anonymous call at home on 1/18/90 and the caller stated that if he voted against the union his car would be damaged. Mr. Calabrese asked that a record be made of these incidents and Ms. Theriault was advised to contact this writer if she or her husband received any more threats.[26]

Calabrese testified that he was at the Hotel on January 20 and heard about the incident through the Hotel ''grapevine.'' He called in L. Theriault and subsequently called the police who took her statement. The next day, Sunday January 21, 1990, Calabrese hired Waterbury police to patrol the hotel parking lot on a 24-hour-a-day basis. On Monday, January 22, 1990, Calabrese had a meeting with about 50 employees, which is noted above in Grenier's testimony. The speech he gave at this meeting, some 2 days prior to the election states in part:

> I didn't say anything when the Union attacked me personally, but when they start threatening our employees, I draw the line. By now most of you have heard about how this union and Mr. Traber have threatened to harm and [sic] employee's family and threatened their property. (Repeat) I understand that Mr. Traber is denying this, why would any employee make a statement like this and be so upset, if it were not true.
>
> Also over the past few weeks other employees have told of threats and intimidation by the union. Next time, it could be you they threaten, what kind of people are they?
>
> It makes me very angry that these people are intimidating our employees and using threats of violence and scare tactics to get votes. This is not legal and I have informed my lawyer of the incident and we are discussing the filing of a charge of unfair labor practice against Local 217 with the National Labor Relations Board.
>
> Also starting yesterday, we have 2 policemen patrolling the parking lot all day and night in response to the Union's threat of what will happen at the hotel. I guarantee that we will protect our employees anyway that is necessary. I can't believe that in this country such threats and coercion can be used to force a decision on someone against his will. This is not Russia or China, this is the United States. All people still have the freedom of choice—not only the Union people.
>
> By all their latest actions this union has shown what it is really all about. Verbally abusing people and threats of intimidation they are trying to gain access to this hotel by any means. Just think what they would do to a member that disagreed with them, if they are threatening employees just to get a vote.
>
> These tactics have so angered and upset people that a majority of you have voluntarily told me you want no part of the Union.

Calabrese also testified that when the Theriault incident took place, he learned that ''many employees—some employees that were for the union at that point changed their minds.'' He contends that this was learned from employees coming forward and volunteering this information. Though he contends that all such messages were given to him prior to his speech, I question his memory on this point as he was shown to be very poor at remembering dates of events. Moreover, even prior to the speech, he lent total credibility to the alleged Theriault threat by hiring police to patrol the Hotel.

The only ''threats'' that Calabrese could recall were those set out in the Theriault statement to the police and the tire slashing ''threat'' some time earlier attributed to Svehlak. Contrary to his statement in his speech, I cannot find that there was any documented threat to the Hotel. The police were not hired to protect Theriault's home or to escort her and her husband to and from work. They were in instead placed at the Hotel on a 24-hour basis where they would have maximum visibility and serve as a constant reminder just prior to the election that Traber and the Union were a threat to their persons and property.

I do not believe the Theriault ''threat'' in any way justified the extreme and instant response taken by the Hotel. I fully believe that it just provided the opportunity for the Hotel to make a dramatic, inflammatory, and largely unfounded attack on the Union's credibility. I find that the statements made by Calabrese in this regard, together with his hiring of the police just before the election, were made with the intent of disparaging the Union and undermining support for it, in violation of Section 8(a)(1) of the Act. *Kawasaki Motor Corp*., 257 NLRB 502 (1981); *Taylor Chair Co*., 292 NLRB 658 (1989); *F.W.I.L. Lundy Bros. Restaurant*, 248 NLRB 415, 422–423 (1980); *Lehigh Lumber Co*., 230 NLRB 1122, 1125 (1977).

c. *Alleged unlawful postings*

In December 1989, the Hotel posted the following statement about Roger Sauvageau:

> The Company has learned that the local office of the National Labor Relations Board will be issuing a complaint against the Company regarding Roger Sauvageau. The primary allegation of the complaint will be that the Company discharged Mr. Sauvageau because of his union activities.
>
> The Company denies each and every one of these allegations. It is important for you to note that there has been no finding by a judge that the Company is guilty of violating the law. Rather, all that exists at this point

[26] Although it is really not necessary to this discussion because Respondent did not explore the matter further, I do not find that Traber threatened the Theriaults and do find that they misinterpreted some of his statements.

> is a set of allegations against the Company. Allegations which the Company will prove are false at a trial to be scheduled in approximately four months.
>
> We remain convinced that the only reason this complaint was issued is because Mr. Sauvageau and the Union lied about the circumstances of his discharge. Our lawyers have told us that these lies will be exposed at trial when we will have the opportunity to cross-examine Mr. Sauvageau and his supporters and present our side of the story before an independent judge in a court of law.
>
> Mr. Sauvageau was discharged on November 30, 1989. He has not worked at this Hotel since that time and we know we will prevail and that he will never work here again. If you have any additional questions regarding this matter, please do not hesitate to contact us.
>
> We feel it is important for you to know the Hotel is in the process of taking legal action against the Restaurant Worker's Union. The Restaurant Worker's Union has threatened, intimidated and coerced Hotel employees in an effort to force them to join the union so they can replace the dues paying members they lost when the Hilton Hotel closed this month in Hartford.

An independent judge has now found that the Hotel did fire Sauvageau for engaging in activities on behalf of the Union and thereby the Hotel has threatened, intimidated, and coerced its employees to dissuade them from joining the Union. By posting this letter to employees, I find that Respondent was reminding its employees of its unlawful action and reinforcing the message it sent by firing Sauvageau in the first place, that it can get rid of union supporters. Accordingly, I find that the posting is at least an implied threat of reprisal for union support and violates Section 8(a)(1) of the Act.

In January 1990, Respondent distributed flyers throughout the Hotel and posted large versions entitled ''IS THIS UNION JOB SECURITY?'' and had two newspaper clippings about the Parkview Hilton and Summit Hotel closing in Hartford. Underneath it said ''DON'T LET THIS HAPPEN HERE! VOTE NO!''

One clipping states ''Summit Plans Layoffs, Closing of hotel bar, restaurant to affect food service staff.'' The other has a headline which reads: ''Hartford Hotel Closes Doors.'' The article, which follows, reads:

> The Parkview Hilton, one of Hartford's most acclaimed modern buildings when it opened 35 years ago, has quietly closed its doors, perhaps for the final time. The 16-story, 382 room metal-and-glass hotel closed Sunday. Its current owner, Chase Enterprises, had announced in the fall that it would either sell or close the unprofitable hotel by New Year's Eve. The development firm later said several buyers were interested in the site—overlooking Hartford's Bushnell Park—but no one came forward to buy the hotel itself. The hotel, which opened as The Statler in 1954, has been through several changes of name and ownership and was even closed briefly in 1981 and 1982 for renovations. The Parkview boasted the biggest ballroom in the state, with seating for up to 1,200 diners. Newly elected Connecticut governors often ate breakfast at the hotel before walking across Bushnell Park to be inaugurated at the Capitol. But the Parkview suffered in competition with two newer downtown hotels, the 400-room Sheraton and the 287-room Hotel America, now known as the Summit. The opening of the J. P. Morgan Hotel in December further weakened the Parkview's position. At the time of its closing, the hotel had about 200 employees.

Nothing in the headlines or the text suggests that unionization played a part in the two hotels' problems. Although the bold print on the flyers taken together with the headlines of the clippings might imply a connection between the two, the article itself makes no such connection. I do not believe this flyer represents such a degree of misinformation that it constitutes an unfair labor practice. *EDP Medical Computer Systems*, 284 NLRB 1232, 1264 (1987).

C. *Conclusions with Respect to Respondent's Preelection Conduct and Direction of Second Election*

I have found that in the prepetition period Respondent engaged in unfair labor practices and objectionable conduct by issuing written warnings to and discharging Roger Sauvageau, and issuing warnings to Eliza Svehlak. In the petition period, I have found that Respondent has engaged in unfair labor practices and objectionable conduct by posting an unlawful notice rebroadcasting its discharge of Sauvageau and its intent never to rehire him, by discriminatorily reducing the hours of Hector Echeandia, by discriminatorily taking Cesar Berrera off the work schedule for 1 week, by assigning Svehlak to clean rooms on election day, by impliedly threatening an employee with retaliation for supporting the Union in an employee meeting, and by disparaging the Union just before the election by overreacting to the alleged union threat to the Theriaults and using police patrols to give the impression that the Union posed an immediate danger to the employees and their property. Given the fact that the Union enjoyed majority support among the Hotel's employees[27] as of December 14, 1989, yet lost the election, I believe the Respondent's unfair labor practices and objectionable conduct played a significant role in the election process. As that process was significantly tainted by the Respondent's unlawful activity, I will recommend that a second election be directed.

D. *Postelection Conduct*

It is alleged that even after the election which was won by the Hotel, it continued in its desire to rid itself of known union activists. The complaint alleges that Barbara Racine, Laurie Grenier, Grace Kelley, and Eliza Svehlak were all targets of Respondent's continuing unlawful motivation. These allegations will be discussed below. For the reasons given hereinafter, I believe that the Hotel waited for a few months after the election and then took steps to rid itself of some of the most outspoken union activists still on its payroll. Although I am persuaded that its hotelwide layoffs, cutbacks, and reductions in November, December, and January appear legitimately motivated by economic factors, I am equally

[27] The matter of majority support is discussed in detail at a later point in this decision in relation to the matter of issuing a bargaining order.

persuaded that its actions in the spring of 1990 were motivated solely by union animus and were unlawful.

1. Layoffs and loss of hours in the restaurant

The complaint alleges that Respondent unlawfully terminated Barbara Racine in or about April 1990; unlawfully reduced Grace Kelley's hours in or about April 1990; reduced the number of scheduled workdays on its part-time waiters and waitresses from three to one on or about April 1990; and terminated Laurie Grenier in or about April 1990. Respondent contends that each of the three involved waitresses actually quit their employment and that it did not reduce the hours or scheduled days as alleged. Its explanation for changes in schedules follows.

As discussed above, Respondent determined in mid- to late-December 1989, that in allocating the hours to its PM restaurant servers, full-time restaurant servers would receive their hours first and then the remaining hours would be divided among the part-time restaurant servers. The Hotel gave three reasons for this decision: (1) consistency of service; (2) maintaining of an established work force sufficient to cover most of the shifts; and (3) ease of scheduling. The application of this decision resulted in the layoff and/or termination of a number of part-time restaurant servers in December 1989.

By mid to late March 1990, the Hotel contends it was again faced with a problem concerning the scheduling of its PM restaurant servers. Two of its experienced full-time restaurant servers, Ray Putinas and Deborah Wilroy, had quit in February. In addition, one of the other full-time servers, Judy Sidorick, was having recurring problems due to a car accident and could not work for several weeks in March and then worked primarily part time. Grenier and Racine had requested to switch from full-time to part-time status in early March. By mid-March, the Hotel had no regular full-time restaurant server. Patrick Lien was hired in early March on a part-time basis with the expectation that he would go to full time in the summer. Morgan Morris, another full-time restaurant server, was not hired until late March. In addition, by the end of March, the Hotel's business was beginning to increase slightly over the previous months so that there was a need for more PM servers at the Hotel.

The PM restaurant manager, Melinda Merrill, was faced with a scheduling problem. She had no full-time staff on which she could rely to work most of the shifts and she had to juggle the hours among a variety of part-time employees. Thus, Merrill indicated to her supervisor, hotel food and beverage director Linda Boulanger, in late March, that steps had to be taken to remedy the situation.

After discussing the situation, Boulanger and Bair decided that the best approach was to maintain a preference for full-time employees. Since it made more sense to ask some of its current employees to go full time instead of hiring addition outside people, the decision was made to ask two of its existing part-time employees, Stacy Boutot and Susan Vaughn, to work full time. Both were asked and agreed to go full time.

By the end of April, the Hotel had returned to full strength in terms of its full-time staff. Sidorick had returned from her accident and worked close to full-time hours for several weeks before she eventually left the Hotel. Boutot and Vaughn had committed to go full time in the weeks ahead. Similarly, Lien had committed to go full time for the summer. Finally, Morgan Morris and Johanna Lia had been hired to work on a full-time basis. The Hotel contends that consistent with its practice, these full-time employees were given the bulk of the hours and whatever hours were left were given to the part-time employees. With a complete full-time work force, there were only so many hours available for the part-time employees and the number of shifts available to the part-time employees varied anywhere from one to three during this time.

The Hotel denies it reduced the number of scheduled shifts for its part-time restaurant servers from three to one. The Hotel contends it continued its practice of scheduling the hours for its full-time employees first and its part-time employees second. It denies that there was a deliberate attempt to reduce the shifts for part-time employees from three to one solely because Grenier, Racine, and Kelley were part-time employees. It contends that Racine and Grenier simply complained the first time that they were scheduled for only one shift and requested to be let go at that time.

Respondent's reasoning as set out above sounds plausible on its face; however, there are a number of significant questions left unanswered as will be shown below in the discussion of the evidence relating to the three discriminatees. Foremost among these questions is why they were never offered the option of going to full-time status when they were the most senior of the part-time servers. Why were they never offered this option before new employees were hired, a practice that the Hotel itself argues does not make good sense. Why were their termination papers dated far beyond the dates they actually left, and finally, why did not Linda Boulanger, who actually made the decisions respecting the PM restaurant servers, fail to testify. I am convinced that the answer to each of these questions is simply that the reasons advanced by Respondent are pretextual and the sole aim of the scheduling changes was to eliminate the discriminatees, an aim which Respondent accomplished.

a. *The terminations of Laurie Grenier and Barbara Racine*

The circumstances surrounding each of the discriminatees varies somewhat, so evidence related to each will be given in some detail. First to be discussed are Laurie Grenier and Barbara Racine, as noted earlier, organizing committee members and frequent debaters of Calabrese in the employee meetings held by him. After the election, Laurie Grenier returned to her full-time schedule of four shifts. Barbara Racine's hours increased only to three nights, less than the four normal to a full-time employee.

Both Racine and Grenier were given evaluations in March 1990. Lisa Brodeur and Merrill, who together were the A La Carte restaurant managers, gave one to Racine on March 7. It was dated, however, November 14, 1989. Merrill testified that, in fact, she had filled out the evaluation, but had avoided giving it to her in November because it was going to be an unpleasant experience.[28] The time when it was supposed

[28] Regardless of any antiunion sentiments harbored by Merrill and their effect on her relationship with Racine, there is ample evidence in the record that the two women had a serious personality conflict which predated the union campaign. Racine especially did not like or respect Merrill and their dealings with one another were strained.

to be given, her anniversary date of November 14, was in the midst of the union organizational effort.

Brodeur went over the evaluation with Racine. She told her that the quality of her work was excellent, she was a very strong waitress, that she was there all the time, they had no problems with her on the floor, and she worked a lot of extra shifts when she was needed. The only problem was her poor attitude, that she questioned management. Racine laughed and said that was what the whole thing with the Union was about. Brodeur just smiled in response. The evaluation noted that Racine received many excellent comments from the guests. It noted, however, that she complained consistently about management to her fellow employees which, in turn, made many of them feel uncomfortable.

In the past, Respondent had posted positive comment cards about Racine in the pantry. Bair spoke to her at least twice and told her that she was doing a good job, and he received the most and nicest comment cards about her from customers, and encouraged her to keep up the good work. She was twice nominated to be Employee-of-the-Month.

Laurie Grenier received two evaluations in March 1990. First, Restaurant Manager Sam Preston gave her one that graded her ''excellent.'' He noted that she had been ''valuable to the PM staff,'' both as a server and a trainer. He noted that she helped wherever needed and comes in when asked to. He noted that sometimes her ''attitude'' needed ''adjusting,'' but that is to be expected. He noted that she sometimes gets upset by others and this can affect her work. ''Overall, Laurie is a solid and valuable employee.'' Preston indicated to her that he was happy with her work, but that her attitude needed work.

Within a few days, Grenier was called to Linda Boulanger's office, where Boulanger informed her that the first evaluation was no longer any good, that she felt Preston could not give her an evaluation because he did not know her like she did, and that she was going to give Grenier a different evaluation. Grenier objected that she did not feel it was right, that Preston was her boss, and she had to approve it. Boulanger said that she was better qualified than Preston because she knew her longer. She then told Grenier that she was a good worker and never had any problems, but she had a ''poor attitude,'' which needed to be changed. Grenier said it was pretty obvious why she had a poor attitude, with everything that had gone on in the last 6 months, that it was pretty hard not to feel pressure with everything that was going on. Boulanger said that ''regardless,'' this was the way she felt, and it had to be said.

The evaluation noted that she had ''excellent skills'' and ''continually gets favorable comments from customers.'' The classifications were all graded ''excellent,'' except for ''attitude'' and ''involvement,'' which were deemed ''poor.'' It also said she had problems with other employees. Grenier had received an evaluation previously, which noted that she ''is always positive,'' and wanted her to be ''actively involved with the development of new personnel.'' In fact, she was made shift leader in July 1989, and was responsible for training new waitstaff. She had won several awards for sales among the waitstaff. Bair and Calabrese had both praised her work when she waited on their tables in the restaurant.

In early March, Grenier asked Merrill if she could go to part-time status. Merrill said fine, and Grenier went down to 3 days on the schedule. She made the request because she no longer needed the benefits associated with full-time status, and she wanted to try to expand her own insurance business at home.

In mid-March, Racine spoke to Merrill. She told her that because her nights had been cut, and because of the incidents where they had called up and taken away her shift, that she had lost a lot of money and was forced to go out and get a daytime job. Therefore, she was requesting that she go to 2 nights on the schedule. She told Merrill that she was always willing to come in for an extra night if they needed her. Merrill said there would be no problem with that.

Around the time when Grenier and Racine made theserequests, the Hotel hired new servers for the PM waitstaff, who were each working part time. Stacy Boutot was hired on February 21, 1990. Patrick Lien was hired on March 7, 1990, and worked part time until June when he became full time. Bair testified that Lien was hired with the understanding that he would go full time after he had passed his exams.

The record shows that the week ending March 11, an employee named Sharon was tried out as a waitress on the evening shift, but preferred working as a cocktail waitress. Respondent continued hiring waitstaff for the evening shift in the restaurant. Morgan Morris was hired on March 19. Adrienne D'Amato was hired on March 26, and worked only one shift.

In April, Linda Boulanger instructed Merrill to offer full-time employment to Sue Vaughn and Stacy Boutot, both of whom were working part time. Bair explained that he and Boulanger had decided to ask some part-timers to go full time, and to hire new full-time employees for the PM waitstaff. He testified that they felt ''some'' part-time employees had ''potential of going full-time,'' and ''it would be easier for us to do that than hire all new people and train them.'' Bair testified that he and Boulanger considered ''availability and flexibility with their overall ability.'' He admitted that he had no firsthand knowledge as to the availability and flexibility of the employees, and said he relied on his manager's information.

Boulanger was not called to testify though she is still employed by Respondent. There was no testimony, therefore, from the manager who apparently made the determination as to why two relatively recent hires, Sue Vaughn (September 1989) and Stacy Boutot (February 1990) were considered more ''flexible'' or ''available'' than Barbara Racine, Laurie Grenier, or Grace Kelley; or why these latter three were not considered being offered full-time work rather than hire new full-timers. Although on brief, some disparaging comments are made about the skills and attitudes of Grenier, Racine, and Kelley, there is nothing in their performance reviews given prior to their terminations which would support these comments. Respondent also calls into question the credibility

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I have taken this fact into consideration when determining whether Respondent's actions with respect to Racine were lawfully motivated. Respondent urges that similar ill will existed between Kelley and Grenier on the one hand and Merrill on the other. I do not find that the facts support this. Any problems they were shown to have with Merrill were directly related to their union activity. In any event, Merrill had nothing to do with the events which resulted in the terminations of the three restaurant servers. That was all the doing of Food and Beverage Director Boulanger, Hotel Manager Bair, and Restaurant Manager Brodeur.

of Grenier and Racine. I credit their testimony about their postelection treatment as it appeared credible and most of the testimony, even that harmful to Respondent, was not in any fashion rebutted. I also draw an unfavorable inference from Respondent's failure to call Boulanger, the person with the most knowledge about Respondent's postelection actions with respect to the three discriminatees here involved.

Racine discovered in April that she had been dropped down to one shift on the schedule. She went and questioned Merrill about it, and said she thought they had agreed that she would get two nights. Merrill said it was a slow period, and walked away. The following week, Racine discovered that she was completely off the schedule. She called Lisa Brodeur and asked why she was not on the schedule for the following week. Brodeur said it was slow, but she should call about the following week's schedule. Racine said she wanted to speak with Bair, that they had taken her off schedule because of the Union, and she would be filing charges. She requested an appointment with Bair, and Brodeur said, ''Fine.''

Racine went to speak with Bair on April 26. When she arrived, she met Morgan Morris, another p.m. server, who informed her that they had asked him to be manager, and that he ''desperately needed'' somebody to take his nights that week. When Racine tried to speak to Bair, she was told that he was in a meeting. While waiting for him, she walked through the Garden Cafe and met Linda Boulanger at the entrance. She asked Boulanger what was going on with the schedule, and why was she not on it. She told Boulanger she wanted her two nights. Boulanger said it was slow, but that next week's schedule was not yet done, that she should call in first. Racine said that others like Sue Vaughn and Judy Sidorick still had their nights, why was she taken off? Boulanger responded that they were full-timers. Racine said they had never offered Grace Kelley, Laurie Grenier, or herself full-time positions. Boulanger did not respond to this. Racine said that if that is what they are going to do, she wanted a layoff slip. They proceeded up to accounting, and Boulanger spoke to Ramin Hakim, the controller. They did not know what to do and told her to wait outside. They returned and gave her a layoff slip for just 1 week. Racine told Boulanger that she was going to file more charges. Boulanger told her to go ahead. As she left, she ran into Morgan Morris again, who informed her that the schedule for the following week had in fact already been prepared.

At the hearing, Respondent produced two documents related to Racine's termination. There was an unemployment notice drafted bearing the date April 30, 1990, which stated that the reason for leaving was voluntary departure. It came in an envelope which said on the outside, ''Dick Bair and Joe Calabrese have not decided what they want to do.'' Racine had neve been shown the unemployment notice, and she did not voluntarily leave.

Respondent also produced an employee termination review which was signed on June 26, 1990, which stated, ''requested permanent layoff left.'' It described her as a ''constant complainer,'' and that she would not be rehired. Boulanger and Bair initialed it. It listed her as ''poor'' with regard to four different job performance categories. Bair said the effective date of the termination was April 19, 1990. Racine had ever been shown this document.

Grenier saw in mid-April that she had been scheduled for only one shift. She spoke to Lisa Brodeur and asked her why she had been put from three shifts to one. Brodeur told her she was out because they wanted to hire full-time employees. Grenier told her that she wanted a partial unemployment slip if they were only going to give her 1 day. Brodeur said he would talk to Bair and get it on Monday.

Grenier spoke with Sue Vaughn and Stacy Boutot that evening and asked if they had their hours cut. She learned that Merrill had given them the choice of either going full-time or being cut to one shift. They told her they were upset because they did not really want to be full-time, but had no choice.

Grenier called on Monday for Bair, but could not reach him. She then spoke to Linda Boulanger instead on the phone. Grenier was angry and asked why she had been cut. Boulanger told her that they wanted to hire more full-time employees. Grenier said, ''I work three nights, full-time is four. If you asked me if I had to work one more night to keep my job, I would have worked it. You never asked me.'' Boulanger repeated that they were looking for full-time employees, and ''since you cut one night, we figured you're part-time.'' Grenier said, ''Yes, but you asked other part-time people to go full-time. It doesn't make any sense.'' Boulanger didn't respond to this point. Grenier told her that she was going to file for unemployment.

On Tuesday, Grenier went to unemployment and filed for benefits. Afterwards, she called the hotel and spoke with Yolanda, a payroll employee, and asked if she could come and get her partial unemployment paper signed. Yolanda said she was confused. She said that the Controller had said that Grenier was looking for a voluntary quit slip, but Bair had said she wanted a partial layoff. She said she could not do anything until she found out what the story was. Grenier asked her to call back, but she did not. Grenier called her back to find out what was happening. Yolanda simply transferred her to Bair, who told Grenier that she thought she had quit. Grenier said she never said she quit. She said she could not live ''if you were going to give me one day a week,'' that she would collect partial unemployment. She said why else would she be going through unemployment. Bair said Brodeur had said she quit. Grenier said, ''That's so untrue. It's a misunderstanding. I don't know how that happened, that's not true. The truth is I want a partial. You cut me. I don't understand why you cut me?'' She explained to Bair that she had been cut when she would have been willing and able to work one more night. Bair said that because she had been cut down to 1 day, he figured she was part time. Grenier told him that other part-timers had gone full time, they had had a choice, but he had never offered it to her, and that meanwhile he was running an ad in the newspapers for more waitresses. She said it was ''very, very unfair.'' Bair said he would get back to her in the morning.

Bair did not return her call. She called him and he said that he had decided that she had quit, that he had reviewed all the circumstances and that is what he felt. She told him that she figured he would say that, that she had spoken to unemployment and she would be filing charges there, and with the Labor Board as well. Bair said, ''Wait a minute. You didn't let me finish. You can have an option here. You could be on an on-call basis, and collect unemployment.'' Grenier responded, ''That's awfully funny. Five minutes ago

you said quit, and now you are offering me on-call with a layoff.'' Bair said yes. Grenier said fine. Respondent gave Grenier her unemployment papers and never called her back to work.

Bair testified at the hearing that Grenier has asked for a permanent layoff, and that was why she was taken off the schedule. He said that after he reviewed what had happened, he felt that she had requested a permanent layoff and then regretted it. He admitted that he really did not expect to call her when he offered to put her on-call. There was no explanation why she was not put back on schedule once she made it clear that was what she wanted.

The record shows that Grenier last worked in the payroll period ending April 29, 1990. Respondent placed in her personnel file an employee termination report dated July 17, 1990, which indicated ''permanent layoff'' due to ''decrease in business levels.'' The scores in the categories of her job performance were lower on this form than they had been on her last evaluation.

Respondent hired Melissa Gibran the following week. She only lasted 2 weeks. When asked why Grenier was not contacted after Gibran quit, Bair explained, ''Apparently there was no need.'' In fact, the record shows that a full-time bartender, Todd LaMedeleine, filled in the following week for one shift while Thomas O'Donnell was hired on May 16, 1990.

The record shows that Respondent continued to hire p.m. waitstaff without ever contacting Grenier or Racine. Both Bair and Merrill admitted that there was a lot of turnover in the waitstaff. For the p.m. waitstaff, Angela Dihlman was hired on July 28, 1990, and Cheryl Russell and Carol Genovese were hired on August 20, 1990. In fact, among the various ads placed by Respondent for waitstaff over a number of months was an advertisement run in August 1990 requesting ''Servers and Table Bussers for the Garden Cafe, full or part-time, experience preferred.'' Moreover, reviewing the weekly payroll records reveals that the so-called full-time servers did not consistently work full time as claimed. For example, while Sue Vaughn began working over 23 hours per week in the payroll period ending April 29, 1990, by the first week of June that pattern had already changed and she dropped to 14.8 hours.

The record shows that beginning in June, Vaughn worked over 20 hours only 6 times out of the next 20 pay periods, while she worked less than 15 hours 6 out of those 20 pay periods. Otherwise, she either did not work at all (twice) or between 12 and 15 hours (six times). Similarly, beginning in June, Judy Sidorick worked less than 15 hours 7 out of the next 20 pay periods; between 15–20 hours 6 times; and did not work at all twice. Only five times did she work more than 20 hours. Another example is Stacy Boutot, who during pay periods in September and October worked less than 20 hours every pay period but one, when she worked only 20.1. Thus, reviewing the payroll sheets reveals there was no consistency in the designation ''full-time'' by Respondent, and waitresses continued in a pattern of fluctuating shifts.

In conclusion with respect to Grenier and Racine, I find that they were terminated by Respondent for engaging in protected union activity in violation of Section 8(a)(1) and (3) of the Act. Even if one accepts Respondent's contentions about wanting to shift to more full-time restaurant servers in March 15, 1990, there was absolutely no rational reason offered for why such positions were never offered to Grenier or Racine, the two most senior part-time waitresses. I do not credit any contention by Respondent that they did not ask for the full-time positions and credit their testimony that they did request to made full-time when their schedules were cut to the point they could not make a living. No rational reason is advanced for the Hotel to continue to advertise for new waitstaff without asking these two experienced waitresses to return. The poor comments in their after-the-fact termination reports appear to me to be wholly a concoction to justify the failure to ask them be full-time waitresses. No credible evidence was offered to explain how two of the best waitresses in the Hotel suddenly became two of the poorest. The only evidence of any change in them was their aggressive support of the Union. I fully believe the reason Boulanger was not called to testify was because she could give no reason for failing to offer the two waitresses full-time employment other than the obvious one, the Hotel was attempting to get rid of these employees because of their union activity.

b. *The reduction in Grace Kelley's hours*

Grace Kelley's schedule was cut from 3 days to 1 day in the payroll period ending April 29, 1990. Prior to this, she had spoken with Lisa Brodeur. Kelley had seen that new employees had been hired. She asked Brodeur who the new girl was. Brodeur said she was a new full-time person, that they were having trouble with part-time people, that they were too erratic, and it was hard to keep the schedule. Brodeur said they would be cutting part-timers to 1 day, and the rest would be offered full-time employment, otherwise they would hire new full-timers. Kelley asked if she was going to be cut down to 1 day. Brodeur said she did not know, she would have to talk with Merrill, who was supposed to call Kelley.

Merrill never called her, and she was not asked to go full time. Kelley spoke with Sue Vaughn, who told her that she had been given the choice of going full time or go down to 1 day. Kelley worked one shift for 2 weeks, and then stopped going to work. She felt that work was just too uncomfortable, and she was getting so tense that her husband wanted her to quit. She called in sick twice, and said she would be out on medical leave for several weeks. No one ever called her.

Respondent's employee termination review shows that she was terminated on June 26, 1990. On it her job performance was judged poor in almost every category. It said she would not be rehired. Kelley had never been shown the review, and no one had told her about the negative evaluation of her job performance. Kelley had received two previous evaluations in which she was judged ''good'' or ''excellent'' in all categories. The one she was given in July 1989 described her as a ''very hard worker, good attitude, willing to listen and learn, very dependable.''

For the same reasons that I have found that Respondent unlawfully cut the hours of and/or reduced the schedules of Racine and Grenier, I find that they did the same to Kelley and incorporate that reasoning and the related findings herein by reference. Respondent argues that Kelley was not a union activist as were Racine and Grenier as she was not on the organizing committee. However, she did attend one of the January employee meetings held by Calabrese with the other two and questioned him together with them about Hotel poli-

cies. After that meeting she was certainly fixed in Calabrese's mind with her fellow questioners, Racine, Grenier, and Svehlak. As with the other two waitress discriminatees, no rational reason was advanced for Respondent's action in reducing her schedule. Had she not voluntarily quit her employment because of stress, I am certain she would have joined Racine and Grenier in the ranks of unlawfully terminated employees.

2. Change in laundry department hours and termination of Eliza Svehlak

In March 1990, Respondent changed the hours of its laundry employees from 7 a.m.—3 p.m. to 8 a.m.—4 p.m. Housekeeping Department Manager Kathy Tavares notified the employees of the change, stating it was necessary in order to accommodate all the departments in the Hotel, and particularly, the banquet and Garden Cafe departments.

On May 3, 1990, at approximately 8:30 a.m., Tavares met with laundry employees Rosemarie Fortier, Lucy Castellanos, Candida Cimino, and Eliza Svehlak in the laundry department. Tavares explained to the employees that if there was work to be done they would be required to stay beyond 4 p.m., the scheduled end of their shift. Tavares then left the department. Shortly thereafter, Tavares returned and informed the employees that she wanted them to sign a document stating that she had explained everything (concerning working past 4 p.m.) to them. She did not tell them it was a warning. Svehlak and the other laundry employees then signed the document. This document was later alleged by Respondent to be an oral warning issued to those who signed the document. Tavares claimed that the warnings were issued in response to an allegation that the laundry department employees were leaving work early. Prior to soliciting the signatures of the laundry employees, Tavares consulted with Bair, asking him if she could just ''write this out and have them read it, and explain to them why I wanted them to stay.''

On May 8, 1990, Svehlak was working in the laundry department with Cimino and Castellanos. At noon, Svehlak telephoned both the banquet and Garden Cafe departments to find out if their respective linen needs for the evening were met. Employees from both departments indicated to her that no linen was needed. Approximately 2 hours later, Svehlak informed the other two laundry employees present that they would leave work at 3 p.m. She then turned off the heater on the iron, which takes approximately 1 hour to cool down.

Also around 2 p.m., Svehlak received a phone call from a chemical company representative who was looking for either Kathy or Todd Tavares. Svehlak informed the caller that Tavares was not scheduled to work that day and that Todd was either in his office or on one of the floors. The caller then indicated that Todd had been paged but had not answered. At that point, Svehlak told the caller that she would leave a message for them.

After speaking with the caller, Svehlak proceeded to the housekeeping department to deliver the message and to ask for permission to leave early. In the past she made the decision to leave early on her own. However, after being informed by Kathy Tavares that no one could leave early without permission, Svehlak sought permission to leave early on May 8, 1990. On arriving at the housekeeping office, Svehlak noticed that the lights to the office had been turned off and the door was locked. She then taped the message to the door and returned to work.

At approximately 2 p.m., a small load of tablecloths and napkins were delivered to the laundry department. Svehlak, Cimino and Castellanos then separated the linen, washed the napkins, and placed the tablecloths in the washing machine for the following morning. The laundry employees were unable to iron the linen at that point because the iron had been cooling down since 2 p.m. At 3 p.m., believing that neither Kathy nor Todd Tavares were present at the Hotel, the laundry employees left the premises.

That evening, Tavares was called in to work by Linda Boulanger, who informed Tavares that the Garden Cafe needed napkins. Tavares then left her residence and went to the Hotel to iron napkins.

The following morning, Tavares, who was ''running late'' at the time, telephoned Todd Tavares and asked him to prepare a warning for her because she previously told the laundry employees not to leave work early. Later that day, at approximately 8:30 a.m., Todd Tavares approached Svehlak, Cimino, and Castellanos in the laundry department and informed them that Tavares wanted to see them in her office, individually, at 4 p.m. Following lunch, however, Castellanos telephoned Tavares to find out what was going on. Castellanos told Tavares that they could not wait until the afternoon. Tavares then instructed Castellanos and the others to come up to her office to discuss the situation.

On arriving at Tavares' office, the laundry employees were informed by her that they had left the previous day without permission. Svehlak then stated, ''Well, there was no on to ask permission to leave because there was nobody here'' and proceeded to leave the office. In response to Tavares' assertion that ''employees just don't walk out,'' Svehlak walked back towards Tavares and stated, ''You think you're miss perfect, miss almighty, you got everything.'' Tavares then said despite everything she had done for Svehlak, Svehla had turned around and told ''all those lies and stories'' about her. Svehlak believed that Tavares was referring the National Labor Relations Board charges. Svehlak and the other employees left the office at this point.

The termination report prepared by the Respondent's controller, Hakim, stated that ''Eliza was spoken to for the third time in reference to allowing the department to leave before the scheduled time, and leaving work early from the day to be done for the next day.'' It also indicated three oral warnings had been given, but no written warnings. It was signed by Kathy Tavares. It was initialed by Bair on May 11, 1990.

Hakim also instructed Tavares to go back and add to the warning that Todd Tavares had filled out. He wanted her to add the dates showing when Svehlak had purportedly been warned previously. Tavares testified that she consulted some warning documents which she kept and filled in new warning dates. She claimed, however, that she threw out the purported warnings because ''once people are gone, why should I keep all those files?'' The warning indicated that three written warnings had been given, as well as several oral warnings.

The reason for discipline in the original Todd Tavares' prepared warning was also Svehlak's leaving work early. At the hearing, Tavares gave a very different reason for the termination of Svehlak, one that was not expressed in either of

the two prepared warnings. She claimed that Svehlak was fired for insubordination. Apparently the Respondent in preparing for hearing became concerned about the lack of documentation regarding Svehlak and the unusual back dating of others. On brief it attempts to whitewash the documentation problem by saying it is not perfect. I do not believe it. This Respondent was guided through the union campaign at every step by experienced labor counsel. It already was facing Labor Board charges with respect to Svehlak and I find it incomprehensible that with respect to something as significant as her termination, Respondent would not document everything it could think of as reason for her termination. In fact, I believe it did. The adding of the dates of the purported oral or written warnings to the Todd Tavares' prepared warning was in my opinion nothing more than an attempt to shore up a clearly discriminatory termination, and one that reeked of disparate treatment.[29]

At some unknown point between the date of the preparation of the documentation for Svehlak's termination and the hearing, someone evidently decided that the reason given Svehlak for her termination was not sufficient to make it stick. Hence, for the first time, insubordination, not leaving early without permission, becomes the reason for her termination. On brief, Respondent practically abandons the matter of leaving early and concentrates on the purported confrontation between Svehlak and Tavares.

Tavares testified about the confrontation thusly:

> I said: ''Eliza, why did you shut the ironer off?'' ''Just four days previous to this I told you that you can't do that.'' And she [Eliza] said: ''Why can't I do it?'' I [Tavares] said: ''Eliz, you have to leave that ironer on. We're running a business here.'' And she [Eliza] said: ''I don't have to do anything.'' I [Tavares] said: ''You girls, why did you leave?'' They said: ''Well, Eliza told us to leave.'' I [Tavares] said: ''Eliza, why did you tell them to leave?'' Candy answered: ''Well, she says she is the boss and we're not supposed to come up here and tell you that she tells us to leave like that.''
>
> I [Tavares] said: ''Eliza, you're nobody. You don't have any right to tell these girls to leave when the work isn't completed like that.'' She [Eliza] said: '''You think you're Miss Prima Donna, you don't want to dirty your hands for nothing. You're nothing but' . . . I [Tavares] don't remember if she called me a bitch or whatever she called me. And she [Eliza] said: 'You don't like me because I'm on the union committee.' I [Tavares] said: 'Eliza, give me a break. You voted on that in January.' And she [Eliza] said: 'You're going to have to fire me, because I'm not going to change my ways.'[30] I [Tavares] said: 'That's fine.'''

Tavares then called Calabrese because Bair was not in the Hotel and he referred her to Ramin Hakim. She testified that she told Hakim that: ''I have told her about this previous, but she's just being insubordinate, and she just told me she wasn't going to listen to what I was telling her and it was was simple as that.'' Later that day, Tavares and Hakim met with Eliza and Hakim advised her she was terminated. Nothing whatsoever was said at this meeting about any ''insubordination.''

On brief at 164 Respondent asserts: ''Eliza Svehlak was not discharged as a result of a progressive disciplinary procedure culminating in three warnings. Although her previous disciplinary record was taken into consideration, she was fired for being insubordinate to her supervisor. This was consistent with Hotel rules which provide for the discharge of an employee for insubordination without any prior warning. To argue that unclear disciplinary records imply a pretext for Svehlak's discharge is a smoke screen designed to obscure the reason for her discharge—you do not 'go berserk' on your supervisor calling her Miss Perfect—Miss God Almighty—or bitch and expect to be able to report to work the next day.''

As I have already indicated by my finding that the firing of Mary Crabb was lawful, I do agree that an employer does not have to tolerate abuse and insubordination of a supervisor by an employee. However, in the case of Crabb, her supervisor documented the insubordination and Crabb was informed at the time of her termination that she was being discharged for being abusive to her supervisor. In the case of Svehlak, no documentation was prepared indicating insubordination was the reason for her termination nor was she told this was the reason at the time of her termination. Tavares, whom I have heretofore found to be less than credible, again does not appear to me to be telling the truth. She testified that she told Hakim that Svehlak was to be terminated for insubordination. Then she claims that she signed a blank termination form and Hakim filled in the wrong information, which she never corrected. She was present when Svehlak was terminated and never said a word to correct Hakim when he told Svehlak that she was being terminated for leaving early the day before.

It appears to me that it is Respondent, not General Counsel, who is building a ''smoke screen'' to hide the reason for Svehlak's termination. Hakim did not testify though he was still in the employ of Respondent and I draw an adverse inference from his absence about the reason for Svehlak's termination. As Respondent has abandoned its leaving work early without permission reason for her termination, and as I do not believe the testimony of Tavares with respect to the insubordination reason, I find that both reasons are pretextual and the actual reason is Respondent's continuing animus to-

[29] As the record indicates, despite unrebutted testimony by Svehlak that Tavares, on May 9, 1990, was unaware of the fact that other laundry employees had left work early on May 7, 1990, a warning document, dated May 7, 1990, was produced at the hearing. This document indicates that Cimino, Fortier, and Castellanos left work early on that date and that each employee was receiving their first oral warning. There is no indication on the document that the three employees in question had been orally warned on May 3, 1990, which would have represented their first warning. The record also reveals that Cimino was issued an oral warning on May 9, 1990, for leaving early on May 8, 1990. This particular document indicates that Cimino received a previous warning on May 3, 1990, but makes no reference to the alleged warning issued May 7, 1990.

[30] Svehlak testified credibly that in response to Tavares telling her that if she did not like her job she could quit, she replied that Tavares would have to fire her. I credit Svehlak's version of the foregoing events in any respect that conflicts with Tavares' version. I did not find Tavares to be a credible witness from the standpoint of demeanor nor was her testimony in any significant way supported by documentation or corroboration of other witnesses.

ward Svehlak for her union activities. I find that General Counsel has satisfied his burden under *Wright Line*, supra, and that Respondent has not offered any legitimate, credible defense in response. Accordingly, I find that Respondent has violated Section 8(a)(1) and (3) by its termination of Eliza Svehlak.[31]

E. *Is a Bargaining Order the Proper Remedy?*

The consolidated complaint alleges that a bargaining order should issue in this case because the Respondent's unfair labor practices both before and after the election preclude the possibility of a fair election being held. For reasons detailed hereinafter, I disagree. However, in the event that the Board or the courts ultimately find otherwise, I will make requisite findings regarding majority status as of the date of demand for recognition.

1. Did the Union enjoy majority status on December 14, 1989?

I have heretofore found the unit described supra appropriate for the purposes of collective bargaining. As of the date of the Union's demand for recognition, December 14, 1989, the unit was composed of 220 employees.[32] General Counsel introduced into evidence some 140 authorization or membership cards on which he relies to establish majority status. Seven of these cards contain the signatures of employees who quit or were terminated prior to December 1, and one card was signed by an employee after that date. Thus, the maximum number of properly authenticated cards is 132. Respondent contends that a significant number of the other cards were not properly authenticated and should not be counted.

Respondent objects to the card signed by Norma Hall as he date on the front was not filled in by the solicitor, Eleanora Williams. However, Williams testified to the circumstances of the solicitation and the date of signing, which appears on the reverse side of the card together with Williams' initial. Respondent also objects to the card signed by Rita Koval, as the social security number was not filled in at the time of signing, but was added later by someone other that the solicitor or the employee. No other part of the card, including the signature and the date of signing is questioned and I do not believe the adding of a social security number affects the card's authenticity. Both of these cards should be counted.

The Union gave instructions to the card solicitors to initial and date the reverse side of the cards at the time they were signed by employees. Respondent objects to the authenticity of six employees' cards because they did not contain the solicitor's initials or the initials were added some time after the card was signed. These were the cards of Roseanne Couture, Harold Braman, Mike McKenna, Rita Caron, Thomas Anderson, and Arlene Lepore. The matter of putting initials on cards is not a prerequisite to authenticating them and there as credible evidence adduced from the involved solicitors about each of these cards to prove their authenticity.

The cards of Paul Quint, Edna Thompson, Steve Angus, and Tarif Sharif are challenged because they were not dated by the card signer. However, each of the cards had the date of signing verified by the solicitor and were initialed and dated by the solicitor. I find they have been properly authenticated as the date of signing is established by credible evidence.

The Respondent challenges the cards obtained by solicitor Lisa Chilcoat because it alleges she represented to the signers that the sole purpose of the cards was to secure an election. Respondent relies on the following testimony in support of its position:

> Q. Did he tell you that part of it—one way of doing it (secure an election) was to have people sign authorization cards?
>
> A. That wasn't taking union votes that was finding out how many agreed with the committee on wanting the Union.
>
> Q. Did you explain to anyone how the vote worked when you asked them to sign cards?
>
> A. No, I explained there would be an election?
>
> Q. By signing the card you got an election?
>
> A. Yeah, by getting over half of the employees to sign cards, we would be able to get an election.
>
> Q. That's why they should sign the card. Correct?
>
> A. Yeah, more or less, so if they agreed with wanting the Union.
>
> Q. Sign this card and get an election.
>
> A. That's not exactly what I said.
>
> Q. . . . You discussed the fact that—you discussed union election with them; is that correct?
>
> A. No, we didn't really discuss the election, we discussed what having a union would do.
>
> A. We discussed that, you know, we wanted the union, why we wanted the union, and that we would get an election where we could vote for the union or against the union if we had a majority or a good part of the workers show that they were interested in the union by signing cards.

I do not find that the foregoing limits the explained purpose of the cards to solely securing an election. It is one of the explained purposes but the other was wanting the union. The cards on their face designate the Union as the bargaining representative for the signer and is entitled ''Application for Membership in Local 217.'' The reverse side of the card in bold letters states: ''Don't Gamble, Join the Union!'' There is nothing in the testimony of Chilcoat about what she told prospective signers that would obviate the clear language of the card itself, which was to join the Union. I find the cards solicited by Chilcoat are not defective because of anything she said while soliciting them.

The Respondent objects to the card of Scott Matthews because it was solicited by Hector Echeandia, but returned to Sigfred Echeandia. Both Echeandia brothers testified and no valid reason was shown to question the authenticity or date of Matthews' card. The card of Kimberly McMullin was

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[31] The complaint also alleges that Svehlak was terminated in violation Sec. 8(a)(4) of the Act. I cannot find sufficient evidence to make that finding.

[32] General Counsel contends that unit was composed of 219 employees and Respondent believes it is 222 employees. The list relied on is Jt. Exh. 6, which I find contains the names of some 225 employees. The parties later stipulated to the exclusion of six named employees and left in dispute the status of Eliza Svehlak. I find that she was properly included in the unit. The list does not have the name of Roger Sauvagea who I find should be included.

similarly challenged as two solicitors, Wanda Washburne and Lisa Chilcoat, were involved in securing the card. As was the case with the previously discussed card, both solicitors testified and no valid reason to doubt the card's authenticity or date was developed.

The Respondent objects to the card of Vito Lepore as he was given a card by his wife, who had gotten the card from Theresa Romano. After allegedly filling out and signing the card, he gave it back to his wife, who gave it to the solicitor. I will sustain Respondent's challenge to this card on the grounds that person signing the card did not give it to a solicitor and thus nothing of the circumstances of the signing can be tested. Moreover, the card was undated when received by the solicitor.

The card of Charles Innis was obtained by solicitor Barbara Racine, who testified that Innis signed the card in the presence while both were working at the Hotel on November 21, 1989. Respondent's timecards reflect that Racine was not working on that date. Although the place where the card was signed is brought into question, the signature on the card is not. The card is properly dated and Racine's initials and a corroborating date appear on the reverse side. I find the card has been properly authenticated. Not remembering the exact location of where a particular card was signed a year after the event, especially when the solicitor in question secured signatures on approximately 20 cards, does not strike me as unusual or fatal to the card's authenticity.

The Respondent objects to the card of Joseph Gentile because on the face of the card the date ''11–9–89'' has been changed to ''12–9–89.'' The card was solicited by Racine who testified that she gave Gentile the card in the Hotel's bar, he went behind the bar and filled out the card and signed it and then returned it to her. She could not observe him writing on the card. Her testimony is that the card was signed on ''12–9,'' her initials and that date appear on the reverse side of the card, and the change in date on the card appears to me to have been made by the person signing the card. I find the card has been properly authenticated.

No solicitor supported the introduction of the cards of Joe Ouimet, Karyl Maschi, and Jeffery Beneitis and Respondent objects to them being counted toward proving majority status. I agree. Though the signatures could be compared to the signer's W-4 form, there was no way to be sure of the date of signing or the circumstances of signing.

I have found four of the Respondent's objections to have merit, so I find that General Counsel submitted 128 properly authenticated cards, some 18 more than necessary to establish majority status on December 14.

2. Is the issuance of a bargaining order warranted?

The Supreme Court held in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), that a bargaining order is appropriate where a union has demonstrated that at one point it enjoyed majority support, and the employer has engaged in unfair labor practices which are sufficiently widespread, serious, and pervasive to warrant a finding that ''the possibility of erasing the effects of past practices and of ensuring a fair election (or fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order . . . .'' 395 U.S. at 614.

As I have found above, the Union enjoyed majority support based on authorization cards on December 14, 1989. General Counsel, relying on his belief that unlawful motivation promoted the substantial layoffs, terminations, and reductions in work hours during the period preceding the election, together with the alleged interrogations, warnings, and other alleged unfair labor practices rightly contends that a bargaining order is appropriate under the *Gissel* criteria. However, as I have found that the most profound of the alleged unfair labor practices, the Hotel-wide layoffs, terminations, and reduction in work hours were motivated by legitimate business demands and not union animus, there remain no widespread and pervasive unfair labor practices which would justify the extraordinary remedy sought. Though I have found that the unfair labor practices committed by Respondent prior to the election sufficiently disrupted the election process to require the direction of a second election, these unfair labor practices, as well as those which occurred subsequent to the election, are of a type which may be cured by traditional remedies.

The unfair labor practices involving discriminatory conduct found to have been committed prior to the election were confined to only four employees, Roger Sauvageau, Eliza Svehlak, Hector Echeandia, and Cesar Berrera. There were no proven acts of widespread discrimination among the relatively large (approximately 200–250 employee) bargaining unit. After the election, Respondent's unlawful discrimination was directed again at Shevlak and three restaurant servers, Laurie Grenier, Barbara Racine, and Grace Kelley. Returning Svehlak, Grenier, and Racine to the Hotel and ordering backpay for the four should sufficiently remedy the ill effects their terminations and reduction in hours had on the other employees. Significantly, the terminations of Grenier and Racine were accomplished so quietly that they may have had no effect on other employees. The return of Sauvageau, who the Union made a rallying cause, should strengthen the Union in the eyes of those who want the Union to represent them. The same is true in the case of Svehlak. The Hotel's unlawful use of the so-called threat to the Theriaults and its encouragement of antiunion sentiment in its meetings with employees should be capable of being remedied by posting of an appropriate notice and a cease-and-desist order.

This is especially true as the Hotel experiences a demonstrated high degree of turnover in both its employee and management complement. Based on personnel records placed in evidence, the turnover rate for both management and employee is in the 40- to 50-percent range over a period of a year. Thus there should be no lingering effects of the Respondent's past practices. Additionally, because of the high employee turnover, I am reluctant to recommend the imposition of a bargaining order as it would, in my opinion, remove unnecessarily the right of free choice regarding representation from the current Hotel employees, a large number of whom were not employed at the time of the campaign or the election.

In conclusion, I will recommend that that those employees discriminated against be offered reinstatement and backpay, that Respondent be ordered to cease and desist from its unlawful conduct, and that a second election be directed to afford the affected employees an untainted choice of whether they do or do not want the Union to represent them.

CONCLUSIONS OF LAW

1. Respondent J.L.M., Inc. d/b/a Sheraton Hotel Waterbury is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 217, Hotel and Restaurant Employee and 40 Bartenders Union, AFL–CIO is a labor organiation within the meaning of Section 2(5) of the Act.

3. The following described unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full-time and regular part-time employees including receivers, cooks, dishwashers, night cleaners bartenders, barbacks, banquet servers, banquet set-up, coat room attendants, waiters/waitresses, cocktail servers, bussers, host/hostesses, cashiers, room servic employees, front desk clerks, PBX operators, night auditors, reservationists, bellmen, maids, housemen, floormen, laundry employees, inspectresses, maintenance employees and sports complex attendants employed by the Employer at its Waterbury, Connecticut facility; but excluding office clerical employees, gift shop employee sales employees and guards, professional employees and supervisors as defined in the Act.

4. Respondent has committed unfair labor practices in violation of Section 8(a)(1) and (3) of the Act by:

a. Giving Roger Sauvageau a written warning on or about October 29, 1989.

b. Giving warnings to Eliza Svehlak on Novemher 15 and 17, 1989, and assigning her work duties other than her normal ones on January 25, 1990.

c. Discharging Roger Sauvageau on November 30, 1989.

d. Reducing the hours of work of Hector Echeandia beginning in December 1989.

e. Taking Cesar Berrera off the work schedule for 1 week in January 1990.

f. Reducing the hours of work and discharging Laurie Grenier in or about April 1990.[33]

g. Reducing the hours of work and discharging Barbara Racine in or about April 1990.

h. Reducing the hours of work of Grace Kelley in or about May 1990.

i. Discharging Eliza Svehlak on May 11, 1990.

5. The Respondent has committed unfair labor practices violation of Section 8(a)(1) of the Act by:

a. Threatening Roger Sauvageau that he was on an employer's hit list because of his union activities.

b. Threatening Eliza Svehlak with more onerous work duties and possible termination becaus e of union activities.

c. Posting a notice concerning the discharge of Roger Sauvageau.

d. Encouraging antiunion sentiment at employee meetin while attempting to stifle prounion sentiment and implying retaliation for union support.

e. Disparaging the Union by overreacting to an alleged union threat to an employee and using police presence to give the impression of imminent danger t o employees from the Union.

6. The unfair labor practices committed by Respondent re unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act .

7. The conduct found to constitute unfair labor practices in paragraphs 4 (a, b, and c) and paragraphs 5 (a through d) above is also conduct objectionable to the conduct of the election an Objections 2, 47, 55, 61, 62, 71, and 75 are sustained.

8. The Respondent engaged in no other unfair labor pratices as alleged in the consolidated complaint, as amended.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices and conduct objectionable to the conduct of the election, it is ordered to cease and desist therefrom an take certain affirmative action designed to effectuate the policies of the Act.

Respondent unlawfully discharged Roger Sauvageau on November 30, 1989, discharged Eliza Svehlak on May 11, 1990, reduced the hours of work of Hector Echeand ia in December 1989, took Cesar Berrera off the work schedule for 1 week in January 1990, reduced the hours of work and discharged Laurie Grenier and Barbara Racine in or about April 1, 1990, and reduced the hours of work of Grace Kelley in or about May 1990. I shall recommend that Respondent be ordered to offer full and immediate reinstatement to Sauvageau, Svehlak, Grenier, and Racine, with full backpay and interest thereon to them as well to as Kelley, Echeandia, and Berrera, to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I will further recommend that any reference to these unlawful discharges and the unlawful warnings issued to Sauvageau, Svehlak, Grenier, and Racine be removed from the records of Respondent, that it provide the discriminatees with written notice of such removal and inform them that the unlawful discharges and warnings will not be used as a basis for future personnel actions concerning them.[34]

[Recommended Order omitted from publication.]

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[33] The exact dates on which the hours of Grenier, Racine, and Kelley were reduced and the dates of discharge of Grenier and Racine may best be determined in a backpay proceeding after a close examination of Respondent's payroll records.

[34] The last evaluation report of Kelley, prepared after her quitting work appears to me a fabrication representing only Respondent's antiunion animus. It is in no way borne out by earlier evaluations or any events which are described in the record. I would recommend to the Board that Respondent, be required to expunge this document from its records and not be allowed to use it against Kelley either directly or as an adverse reference for future employment.